

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
(METER, P.J., and O'BRIEN and SWARTZLE, JJ.)**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLEOPHAS ANDREW BROWN,

Defendant-Appellant.

Supreme Court No. 160661

Court of Appeals No. 348079

Circuit Court No. 18-266476 FH


**DEFENDANT-APPELLANT'S
APPENDIX TO SUPPLEMENTAL BRIEF**

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Case Number 2018-266476-FH Entitlement PEOPLE vs. BROWN CLEOPHAS ANDREW Judge Name D. LANGFORD MORRIS Case E-Filed YES Case Filed 03/30/2018 Case Disposed 03/21/2019		
Date	Code	Desc
08/06/2020	PTH	PRE-TRIAL HELD
08/06/2020	OTH	CONT STAY
08/06/2020	AJR	ADJOURN AWAITING REPORT OPINION
08/06/2020	APC	ADJ-COUNSEL 08062020 TO 12102020 BY ORDER
08/06/2020	APR	DATE SET FOR PRETRIAL ON 12102020 11 00 AM Y
06/15/2020	JNA	JUDGE NOT AVAILABLE
06/15/2020	APJ	ADJ-JUDGE 07302020 TO 08092020 BY ORDER
06/15/2020	APR	DATE SET FOR PRETRIAL ON 08092020 08 30 AM Y
06/15/2020	SE	SCHEDULING ERROR
06/15/2020	APJ	ADJ-JUDGE 08092020 TO 08062020 BY ORDER
06/15/2020	APR	DATE SET FOR PRETRIAL ON 08062020 08 30 AM Y
05/21/2020	JNA	JUDGE NOT AVAILABLE ADMIN EMERGENCY
05/21/2020	APJ	ADJ-JUDGE 05212020 TO 07302020 BY ORDER
05/21/2020	APR	DATE SET FOR PRETRIAL ON 07302020 08 30 AM Y
03/26/2020	AJR	ADJOURN AWAITING REPORT APPEAL

Trial Court Docket Entries

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Date	Code	Desc
03/26/2020	APC	ADJ-COUNSEL 03262020 TO 05212020 BY ORDER
03/26/2020	APR	DATE SET FOR PRETRIAL ON 05212020 08 30 AM Y
01/22/2020	MPR	MOTION PRAECIPE FILED FOR 01292020 JUDGE 03
01/22/2020	MTN	MOTION FILED PERMIT TRAVEL
01/22/2020	NOH	NOTICE OF HEARING FILED
01/22/2020	POS	AFFIDAVIT/PROOF OF SERVICE FILED
12/20/2019	APR	DATE SET FOR PRETRIAL ON 03262020 08 30 AM Y
12/19/2019	PTH	PRE-TRIAL HELD
12/12/2019	DAU	DEFENDANT/ATTY UNAVAILABLE
12/12/2019	APC	ADJ-COUNSEL 12122019 TO 12192019 BY ORDER
12/12/2019	APR	DATE SET FOR PRETRIAL ON 12192019 08 30 AM Y
12/12/2019	ADJ	ORDER OF ADJOURNMENT FILED FINALL PRETRIAL CONFERENCE
12/12/2019	STP	STIPULATION FILED ADJ CONFERENCE
10/16/2019	ORD	ORDER FILED COA
08/30/2019	APR	DATE SET FOR PRETRIAL ON 12122019 08 30 AM Y
08/29/2019	PTH	PRE-TRIAL HELD
08/29/2019	OTH	CONTINUED STAY
08/07/2019	SEN	SENT TO COA/FTP/JM
07/24/2019	NTC	NOTICE FILED REQ FOR FILE COA
07/10/2019	DM	DEFENSE MOTION PERMISSION TO TRAVEL - GRTD
07/10/2019	ORD	ORDER FILED GRANT MTN FOR PERMISSION TO TRAVEL TO FL
07/10/2019	ORD	ORDER FILED RE MTN FOR PERMISSION TO TRAVEL TO MS
06/28/2019	ADJ	ORDER OF ADJOURNMENT FILED PRETRIAL
06/27/2019	AJR	ADJOURN AWAITING REPORT OPINION
06/27/2019	APC	ADJ-COUNSEL 06252019 TO 08292019 BY ORDER
06/27/2019	APR	DATE SET FOR PRETRIAL ON 08292019 08 30 AM Y
06/17/2019	ORD	ORDER FILED COA
05/15/2019	NTC	NOTICE FILED FILING TRANSCRIPT
05/15/2019	TRN	TRANSCRIPT FILED EVIDENTIARY HRG 01/23/19

Trial Court Docket Entries

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Date	Code	Desc
05/09/2019	ORD	ORDER FILED SUSPEND RANDOM TESTING/DENY MTN TO TRAVEL
05/08/2019	DM	DEFENSE MOTION AMEND BOND TO TRAVEL - DEN W/O PREJ
05/08/2019	DM	DEFENSE MOTION AMEND BOND NO DRUG TESTING - GR TD
05/01/2019	MPR	MOTION PRAECIPE FILED FOR 05082019 JUDGE 03
05/01/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/01/2019	MTN	MOTION FILED AMD BOND CONDITIONS
03/25/2019	ORD	ORDER FILED GRANT MTN FOR STAY OF PROCEEDINGS
03/22/2019	APR	DATE SET FOR PRETRIAL ON 06272019 08 30 AM Y
03/21/2019	PTH	PRE-TRIAL HELD
03/21/2019	FD	FINAL DISPOSITION
03/21/2019	SY	STAY
03/21/2019	M	MOTION STAY CASE 90 DAYS - GR TD
02/27/2019	OPN	OPINION FILED RE MTN SUPPRESS EVIDENCE
01/31/2019	ORD	ORDER FILED PRETRIAL
01/29/2019	PTH	PRE-TRIAL HELD
01/29/2019	AJR	ADJOURN AWAITING REPORT OPINION
01/29/2019	APC	ADJ-COUNSEL 01292019 TO 03212019 BY ORDER
01/29/2019	APR	DATE SET FOR PRETRIAL ON 03212019 08 30 AM Y
01/29/2019	AJR	ADJOURN AWAITING REPORT OPINION
01/29/2019	APC	ADJ-COUNSEL 01292019 TO 03252019 BY ORDER
01/29/2019	APR	DATE SET FOR TRIAL ON 03252019 08 30 AM Y
01/29/2019	OTH	FINDING OF FACT FILED
01/25/2019	OTH	PEOPLES FINDINGS OF FACT & CONCLUSION OF LAW FILE
01/23/2019	DM	DEFENSE MOTION SUPPRESS EVIDENCE - TUA
01/17/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
01/17/2019	APC	ADJ-COUNSEL 01172019 TO 01232019 BY ORDER
01/17/2019	APR	DATE SET FOR PRETRIAL ON 01232019 08 30 AM Y
01/09/2019	APR	DATE SET FOR EVIDNT HRG ON 01232019 10 00 AM Y
01/09/2019	DM	DEFENSE MOTION EV HRG - GR TD
01/09/2019	ORD	ORDER FILED GRANT MTN EVID HRG

Trial Court Docket Entries

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Date	Code	Desc
01/08/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/08/2019	RES	RESPONSE FILED TO MTN SUPPRESS EVID
01/02/2019	MPR	MOTION PRAECIPE FILED FOR 01092019 JUDGE 03
12/28/2018	SE	SCHEDULING ERROR
12/28/2018	APJ	ADJ-JUDGE 01172019 TO 01222019 BY ORDER
12/28/2018	APR	DATE SET FOR PRETRIAL ON 01222019 08 30 AM Y
12/20/2018	MTN	MOTION FILED DISMISS FOR LACK OF PROBABLE CAUSE
12/20/2018	BRF	BRIEF FILED SUPPT MTN TO DISMISS LACK PROBABLE CAUSE
12/20/2018	NOH	NOTICE OF HEARING FILED
12/20/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
12/20/2018	WLT	WITNESS LIST FILED /EXH
11/30/2018	APR	DATE SET FOR PRETRIAL ON 01172019 08 30 AM Y
11/30/2018	APR	DATE SET FOR TRIAL ON 01292019 08 30 AM Y
11/30/2018	ORD	ORDER FILED PRETRIAL
11/29/2018	PTH	PRE-TRIAL HELD
10/25/2018	PTH	PRE-TRIAL HELD
10/25/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
10/25/2018	APC	ADJ-COUNSEL 10252018 TO 11292018 BY ORDER
10/25/2018	APR	DATE SET FOR PRETRIAL ON 11292018 01 30 PM
09/14/2018	WPS	WORKING ON PLEA/SETTLEMENT
09/14/2018	APC	ADJ-COUNSEL 09132018 TO 10252018 BY ORDER
09/14/2018	APR	DATE SET FOR PRETRIAL ON 10252018 08 30 AM Y
09/14/2018	APP	APPEARANCE FILED
09/13/2018	PTH	PRE-TRIAL HELD
08/28/2018	NTC	NOTICE FILED DISTRICT CT ARRAIGNMENT
08/14/2018	APR	DATE SET FOR PRETRIAL ON 09132018 08 30 AM Y
08/14/2018	ORD	ORDER FILED GRANT MTN WDRAW/SET HRG
08/13/2018	DM	DEFENSE MOTION COUNSEL WITHDRAWAL - GRTD
08/09/2018	PTH	PRE-TRIAL HELD
08/09/2018	DM	DEFENSE MOTION COUNSEL WITHDRAWAL - TUA

Trial Court Docket Entries

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Date	Code	Desc
06/01/2018	ORD	ORDER FILED PRETRIAL
05/31/2018	PTH	PRE-TRIAL HELD
05/31/2018	APR	DATE SET FOR PRETRIAL ON 08092018 08 30 AM Y
05/31/2018	APR	DATE SET FOR TRIAL ON 08132018 08 30 AM Y
05/10/2018	PTH	PRE-TRIAL HELD
05/10/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
05/10/2018	APC	ADJ-COUNSEL 05102018 TO 05312018 BY ORDER
05/10/2018	APR	DATE SET FOR PRETRIAL ON 05312018 08 30 AM Y
04/13/2018	APR	DATE SET FOR PRETRIAL ON 05102018 08 30 AM Y
04/12/2018	ARR	ARRAIGNMENT IN COURT
04/09/2018	GIF	GEN INFO FILED
04/03/2018	DCR	DISTRICT COURT RETURN FILED
04/02/2018	N	NTC CT ADMN FILED
03/30/2018	N	NOTICE FROM COURT ADMINISTRATOR FILED
03/30/2018	A	PROSECUTORS ORDER 18-51375
03/30/2018		ARRESTING AGENCY: OAKLAND COUNTY SHERIFF'S DEPT.
03/30/2018		52/2 DISTRICT COURT 18-000099
03/30/2018	CTN	CENTRAL TRACT 63-18-051375-01
03/30/2018	SID	STATE ID 2591110P
03/30/2018	DOF	DATE OF OFFENSE 11/24/17
03/30/2018	CCA	ARRAIGNMENT - THU, 04122018 AT 0830AM
03/30/2018	DCX	EXAM FOR 03/30/18 WAIVED
03/30/2018	DOB	BIRTH YEAR - 55
03/30/2018	CHG	750.227 CARRYING A CONCEALED WEAPON
03/30/2018		BOUND OVER AS CHARGED
03/30/2018	CHG	257.6256B OWI/PER SE - 2ND OFFENSE
03/30/2018		BOUND OVER AS CHARGED
03/30/2018	CHG	750.237 POSS FA U/INFL
03/30/2018		BOUND OVER AS CHARGED
03/30/2018	COB	CONDITIONS ON BOND

Trial Court Docket Entries

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Date	Code	Desc
03/30/2018	BON	BOND POSTED BY: DEFENDANT
03/30/2018		ADDRESS: 16155 MEREDITH CT.
03/30/2018		LINDEN MI 48451
03/30/2018		TYPE: PERSONAL BOND
03/30/2018		AMOUNT: \$5,000
03/30/2018	APR	DATE SET FOR PRETRIAL ON 04122018 08 30 AM
03/30/2018	APR	DATE SET FOR ARRAIGNMEN ON 04122018 08 30 AM Y 09
03/30/2018	APR	DATE SET FOR ARRAIGNMEN ON 04122018 08 30 AM Y 03
03/30/2018	APR	DATE SET FOR ARRAIGNMEN ON 04122018 08 30 AM Y 03

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Defendant's Motion to Dismiss with Brief

OAKLAND
COUNTY

18-266476-FH



JUDGE D. LANGFORD MORRIS
PEOPLE v BROWN,CLEOPHA

**STATE OF MICHIGAN
IN THE 6th JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF OAKLAND**

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,**

CASE NO: 18-266476-FH

vs.

JUDGE: D. LANGFORD MORRIS

**CLEOPHAS ANDREW BROWN,
Defendant.**

**DEFENDANT'S MOTION TO DISMISS
FOR LACK OF PROBABLE
CAUSE TO ARREST DUE TO
VIOLATIONS OF MCL 28.428
AND REQUEST FOR EVIDENTIARY
HEARING**

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[Signature]

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**DEFENDANT'S MOTION TO DISMISS FOR LACK OF PROBABLE
CAUSE TO ARREST DUE TO VIOLATIONS OF MCL 28.428
AND REQUEST FOR AN EVIDENTIARY HEARING**

NOW COMES, Defendant Cleophas Brown, by and through his undersigned attorney, Zachary Race Glaza, and hereby moves this Honorable Court to dismiss the charge of carrying a concealed weapon (contrary to MCL 750.227(2)) for lack of probable cause to arrest due to violations of MCL 28.428 and request for an evidentiary hearing. Defendant's legal and factual support is fully explained in the attached brief in support.

Respectfully submitted,

[Signature]
Zachary Race Glaza (P80036)
Attorney for Defendant

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Defendant's Motion to Dismiss with Brief

OAKLAND
COUNTY

18-266476-FH



JUDGE D. LANGFORD MORRIS
PEOPLE v BROWN, CLEOPHA

**STATE OF MICHIGAN
IN THE 6th JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF OAKLAND**

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,**

CASE NO: 18-266476-FH

vs.

JUDGE: D. LANGFORD MORRIS

**CLEOPHAS ANDREW BROWN,
Defendant.**

**BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF PROBABLE
CAUSE TO ARREST DUE TO
VIOLATIONS OF MCL 28.428
AND REQUEST FOR EVIDENTIARY
HEARING**

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OF CIVIL COUNTY CLERK

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**BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS FOR LACK OF PROBABLE
CAUSE TO ARREST DUE TO VIOLATIONS OF MCL 28.428
AND REQUEST FOR AN EVIDENTIARY HEARING**

Statement of Facts – Instant Offense

On November 24, 2017, Deputies Johnson, Harris, and Elinski (hereinafter JOHNSON, HARRIS, and ELINSKI, respectively) of the Oakland County Sheriff's Office (hereinafter OCSO) were dispatched to the area of Dixie Highway and Deer Lake Road to respond to a property damage accident involving a black Escalade.¹ After making contact with the alleged driver of the Escalade, the defendant Cleophas Andrew Brown (hereinafter BROWN), JOHNSON began an operating

¹ The factual allegations are based on Oakland County Sheriff's Office CR 170215882

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while intoxicated (hereinafter OWI) investigation and Deputy Rymarze (hereinafter RYMARZE) was called to the scene to assist. During the OWI investigation, JOHNSON asked BROWN to exit the vehicle to perform field sobriety tests and upon patting BROWN down JOHNSON discovered a handgun upon BROWN's person. After seizing the handgun, JOHNSON asked ELINSKI to determine BROWN's concealed pistol license status (hereinafter CPL)—ELINSKI contacted an unknown source² and informed JOHNSON that BROWN does not have a valid CPL.

Ultimately, BROWN was arrested and charged with carrying a concealed weapon (contrary to MCL 750.227(2), hereinafter CCW), operating while intoxicated with a BAC of .17³ or more (contrary to MCL 257.625(1)(c); hereinafter OWI), and possession of a firearm while having a BAC of .08⁴ or more (contrary to MCL 750.237(2)).

Statement of Facts –Background Related to BROWN's CPL

On October 25, 2013, BROWN was charged with OWI based on an incident that occurred on August 30, 2013 (hereinafter 2013 OWI).⁵ In a letter from the Oakland County Concealed Pistol Licensing Board (hereinafter OCCPLB) dated September 12, 2013 (see attached Exhibit A), BROWN was informed that his CPL was suspended due to the pending OWI charges, and BROWN was notified that an informal hearing regarding his CPL status was scheduled for November 19, 2013. The case progressed in the typical fashion, and a jury trial was scheduled for October 24, 2014. However, according to the register of actions, the case was dismissed without prejudice because the prosecution was unable to proceed. After the case was dismissed, BROWN contacted Kathy Craig at the OCCPLB to notify her of the dismissal, BROWN was informed by Ms. Craig that his CPL would be reinstated.⁶

² The name is redacted in the case report

³ Expressed in grams per 100 milliliters of blood

⁴ Expressed in grams per 100 milliliters of blood

⁵ According to the register of actions for case number 13-4951-SD, 51st District Court. **Note: the register of actions for this case incorrectly lists the offense date as 8/3/13 rather than 8/30/13.

⁶ Upon information and belief

Then, on November 4, 2014, the OWI charges were refiled (hereinafter 2014 OWI);⁷ however, this time BROWN did not receive notice from OCCPLB that his CPL would be suspended pending resolution of the charges. In fact, even after a jury found BROWN guilty of the charge on May 20, 2015, he did not receive any notice that his CPL would be revoked as a result of the OWI conviction.

In 2018, after the present charges were filed, BROWN requested information about his CPL status from Ms. Craig at OCCPLB and received a response letter dated May 16, 2018 (hereinafter referred to as OCCPLB Response Letter; see attached Exhibit B), that stated that his CPL was revoked for three years as a result of the 2014 OWI conviction. Aside from the OCCPLB Response Letter, Ms. Craig did not provide any further information about the CPL suspension/revocation issue.

At a pretrial hearing on September 13, 2018,⁸ after an inquiry from this writer, the assistant prosecutor told defense counsel that the only additional materials related to BROWN's CPL suspension/revocation was a printout from the Law Enforcement Information Network (hereinafter LEIN Notice; see attached Exhibit C) dated November 24, 2017 at 6:02 pm.

Applicable Law

The Michigan Firearms Statute (hereinafter referred to as the Firearms Statute) enumerates the rules applicable to CPL holders and provides detailed procedures for the issuance, suspension, and revocation of CPLs. MCL 28.421 *et seq.*

One of the many threshold conditions for eligibility to attain a CPL is that the applicant has not been convicted of certain disqualifying offenses in the three years preceding their application.⁹

⁷ According to the register of actions for case number 14-4309-SD, 51st District Court

⁸ This was current defense counsel's first appearance after prior defense counsel was terminated in early August of 2018

⁹ Defendant does not dispute that his 2014 OWI conviction is a disqualifying offense as listed in section 5b(7)(i)

MCL 28.425b(7)(i). If an applicant has been convicted of a disqualifying offense, the applicant is not eligible to receive a CPL until such ineligibility period has expired.

Likewise, CPL holders that commit a disqualifying offense lose their eligibility to possess a CPL, and thus expose themselves to harsh criminal sanctions if found to be in possession of a concealed pistol without a valid CPL. The Firearms Statute states that the county clerk (in this case the Oakland County clerk) "shall suspend, revoke, or reinstate a license as required under this act . . . if the county clerk is notified by a law enforcement agency, prosecuting official, or court of a change in the licensee's eligibility to carry a concealed pistol . . ." MCL 28.428(1). In such instances, the Firearms Statute delineates two distinct notice requirements: (1) notice of the initial suspension of the CPL due to the CPL holder being charged with a disqualifying offense,¹⁰ and (2) notice of a change in the CPL holder's eligibility and the accompanying revocation of the CPL due to a conviction of a disqualifying offense.¹¹

The first notice requirement states that the county clerk, upon notification that a CPL holder has been charged with a disqualifying offense, shall immediately suspend the individual's license until there is a final disposition for that offense. The county clerk must then send notice of the suspension by first-class mail to the individual's last known address that includes the statutory reason for the suspension, the source of the record supporting the suspension, the length of the suspension, and whom to contact for reinstating the license on expiration of the suspension, correcting errors in the record, or appealing the suspension. This notice requirement also states that if the individual is acquitted of the charge or the charge is dismissed, the individual shall notify the county clerk who shall automatically reinstate the license if the license is not expired and the individual is otherwise qualified to receive a CPL. MCL 28.428(2).

¹⁰ MCL 28.428(2)

¹¹ MCL 28.428(3)

The second notice requirement states that the department of state police shall notify the county clerk if it determines that there has been a change in the CPL holder's eligibility to possess a CPL. The county clerk shall revoke the license as required under the Firearms Statute and immediately send notice of the revocation in the same manner, and containing the same content, as the above-stated notice requirement. The department of state police shall immediately enter the revocation into the LEIN. MCL 28.428(3).

Additionally, if a law enforcement officer notifies an individual of a revocation order issued under this section who has not previously received notice of the order, the officer shall enter a statement into the LEIN that the individual has received notice. MCL 28.428(10).

While a revocation order issued under this section is immediately effective, a CPL holder that has not been provided with notice of the order "is not criminally liable for violating the order." MCL 28.428(8). The Firearms Statute adds that an individual found to be carrying a pistol in violation of a revocation order issued under MCL 28.428—who has not previously received notice of the revocation order—must be informed of the order and be given an opportunity to properly store the pistol or otherwise comply with the order before an arrest is made for carrying the pistol in violation of the Firearms Statute. *See* MCL 28.428(9).

Argument

I. Defendant is not criminally liable for carrying a concealed weapon because he did not receive notice and was not given an opportunity to comply with the order as required by the Firearms Statute

a. Failure to Provide Notice of CPL Revocation

In the instant case, BROWN was not provided notice under MCL 28.428. After BROWN was told by the Oakland County clerk that his CPL would be reinstated following the dismissal of the 2013 OWI, BROWN was not notified of the initial suspension pending charges when the 2014 OWI was filed, and he was not notified that his CPL was revoked after he was convicted of a

disqualifying offense at the conclusion of the 2014 OWI case. As a result of this omission, BROWN was not informed of the statutory reason for the revocation, the source of the record supporting the revocation, the length of the revocation, and who he could contact about reinstating the license, correcting errors in the record, or appealing the order.

In the OCSO report, JOHNSON states that ELINSKI, HARRIS, and she were dispatched to the scene of the accident involving BROWN at 5:41 pm. JOHNSON's narrative indicates that she encountered BROWN and began her OWI investigation in short order, which lead to BROWN exiting his vehicle and JOHNSON discovering BROWN's handgun after a pat down; JOHNSON then seized the handgun and turned it over to HARRIS. JOHNSON then states that she administered a preliminary breath test to BROWN at 5:57 pm, and she subsequently placed him under arrest for OWI and CCW. At some point thereafter, ELINSKI told JOHNSON that BROWN does not have a valid CPL. The LEIN Notice stating that BROWN was notified by a peace officer that his CPL was revoked is timestamped 6:02 pm.

Upon information and belief, this interaction with OCSO deputies was the first time that BROWN was given any notice that his CPL was revoked. This is supported by the fact that no such notice letter or communication from the county clerk has been produced despite BROWN's multiple requests. Had BROWN been sent proper notice of the revocation, the OCCPLB Response Letter would have included a copy of that notice, but instead, the OCCPLB Response Letter tersely states that BROWN's CPL had been revoked due to the 2014 OWI conviction.

Moreover, the presence of the LEIN Notice supports the conclusion that BROWN had not received prior notice. The Firearms Statute directs a peace officer to enter such a statement when the officer "notifies an individual of a suspension or revocation order . . . *who has not previously received notice of the order.*" MCL 28.428(10) [Emphasis added.] Therefore, it follows that the

officer that entered the LEIN Notice did so because the officer believed that BROWN had not previously received notice of the revocation order.

Because BROWN did not receive notice that his CPL was revoked, he has qualified immunity and cannot be “criminally liable for violating the order.”¹² Additionally, before he was arrested for CCW, BROWN should have been afforded the enumerated remedy: “an opportunity to properly store the pistol or otherwise comply with the [revocation] order.”¹³ Defendant takes no position in this motion regarding the legality or factual support for the arrest based on suspicion of OWI, but it is self-evident that if the CCW arrest was premature because BROWN was not afforded the protections of the Firearms Statute, the subsequent CCW charge was improper as well.

Michigan case law has not directly addressed the interplay between the Firearms Statute and the CCW law, but an unpublished case from a Michigan federal court interpreted the effect of MCL 28.428(9).¹⁴ In considering an action for civil damages under 42 U.S.C. § 1983, the court analyzed whether qualified immunity (in the context of government officials’ liability for civil damages) applied to police officers that arrested the plaintiff for CCW based on an inaccurate LEIN entry that listed plaintiff’s CPL as suspended, when it was actually valid. *Jelks v Belew*, No. 12-12387, 2017 WL 1279221 (ED Mich, April 6, 2017). The court stated that qualified immunity did not apply because “assuming the LEIN check was proper and that Plaintiff’s license was in fact suspended, the officers should have given Jelks time to stow his gun and comply with the suspension order.” *Id.* at 4.

Significantly, the Michigan Legislature has not demonstrated a grievance with the qualified immunity and remedy provisions of MCL 28.428. Since 2000, the Legislature has amended this

¹² MCL 28.428(8)

¹³ MCL 28.428(9).

¹⁴ The case refers to MCL 28.428(8), but it is MCL 28.428(9) that is analyzed

MCL 28.428 five times,¹⁵ but through each iteration the qualified immunity and remedy provisions have endured without alteration.¹⁶

After the dismissal of the 2013 OWI, BROWN notified the county clerk as required by MCL 28.428(2), and by operation of that subsection, the county clerk confirmed to BROWN that his CPL was automatically reinstated. The Firearms Statute dictates that the occurrence of a subsequent act that rescinds BROWN's eligibility to possess a CPL must be accompanied by proper notice of such change before BROWN can be criminally liable for violating the order—that did not occur in this case, but the Firearms Statute dictates the remedy: BROWN should have been given an opportunity to properly store the pistol or otherwise comply with the order before he was arrested for CCW. Absent the OCSO deputies providing such opportunity, holding BROWN criminally liable for CCW would be in direct violation of MCL 28.428.

b. Deficiency in the Content of the Notice

In addition to failing to provide notice of the revocation order after the 2014 OWI conviction, the information that was communicated to BROWN regarding his CPL was deficient under MCL 28.428.

As stated above, after the 2013 OWI charges were filed BROWN received a letter from OCCPLB informing him that his CPL was suspended due to the pending OWI charges. However, that notice did not include the statutory reason for the suspension, the source of the record supporting that suspension, the length of the suspension, and whom to contact for reinstating the license on expiration of the suspension, correcting errors in the record, or appealing the suspension. Similarly, the OCCPLB Response Letter and the LEIN Notice also failed to include the above information.

¹⁵ Amended by P.A.2000, No. 381, Eff. July 1, 2001; P.A.2008, No. 406, Imd. Eff. Jan. 6, 2009; P.A.2015, No. 3, Eff. Dec. 1, 2015; P.A.2015, No. 207, Eff. Dec. 1, 2015; P.A.2017, No. 95, Eff. Oct. 11, 2017.

¹⁶ Except for changes in numbering

The notice requirements are detailed and unambiguous. They provide a clear ‘if this, then that’ roadmap for the suspension, revocation, and reinstatement of CPLs in Michigan. Likewise, the qualified immunity and remedy provisions provide explicit guarantees and guidance to assure that CPL holders are afforded an opportunity to comply with the suspension or revocation order that would otherwise render their once lawful conduct a serious felony.

Conclusion

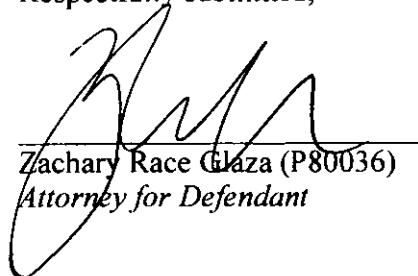
The right to personal protection is essential to the American principle of liberty, and handguns—for better or worse—have become the tool through which countless law-abiding Michiganders have effected that right. The Michigan Firearms Statute—enacted by the Legislature as an exercise of the will of the People—was instituted to preserve that right, and to provide a mechanism by which one can be stripped of that right.

Failure to adhere to the provisions and directives of the Firearms Statute is a rejection of the desire of the People to have a fair and just system governing the possession and dispossession of weapons in the State of Michigan.

Defendant requests an evidentiary hearing with a representative from the OCCPLB to provide testimony and documentation regarding notice, or lack thereof, of the revocation of BROWN’s CPL.

WHEREFORE, Defendant respectfully requests that this court grant his motion in its entirety.

Respectfully submitted,


Zachary Race Glaza (P80036)
Attorney for Defendant

December 20, 2018

OAKLAND COUNTY CONCEALED PISTOL LICENSING BOARD

MICHAEL J. BOUCHARD
 Sheriff Office – Chair
 COL. KRISTE KIBBEY ETUE
 Department of State Police – Member

LISA BROWN
 Oakland County Clerk
 MARK CORTIS
 MEMBER



OAKLAND COUNTY COURTHOUSE
 CLERKS OFFICE – GUNBOARD
 1200 N TELEGRAPH RD
 PONTIAC MI 48341-0413
 Phone: 248-858-0521 or 248-452-2233
 Fax: 248-858-0416

September 12, 2013

CLEOPHAS BROWN

You are hereby requested to appear before the Oakland County Concealed Pistol Licensing Board on Tuesday, NOV. 19, 2013 at 08:45 A.M. for an **INFORMAL HEARING** regarding your permit to carry a concealed pistol.

Also, please be advised that Concealed Pistol License #683528G is SUSPENDED for **OPERATING WHILE INTOXICATED CHARGES PENDING AT 51ST DC.**

PLEASE CALL TO CONFIRM OR WAIVE YOUR APPOINTMENT. There are two options:

- 1) Waive your right to the hearing and not have to appear. Then you can call us after you have gone to court on your case. YOU MUST MAIL YOUR CPL TO THE ADDRESS ABOVE. According to MCL 28.425b it is a 93-day misdemeanor for a CPL holder to fail to return their CPL to the licensing board when the board has suspended or revoked it.
- 2) Come to the hearing and bring in COURT documents to show the disposition of the case. BRING YOUR PERMIT WITH YOU TO THE MEETING IF YOU HAVE IT.

The meeting of the Board will be down by the auditorium in a conference room. LOOK FOR THE SIGN IN SHEET; Oakland County Service Center, 1200 N. Telegraph, Pontiac, Michigan.

KATHY
 Oakland County Clerk
 Concealed Pistol Licensing Board



Lisa Brown

OAKLAND COUNTY CLERK/REGISTER OF DEEDS

www.oakgov.com/clerkrod

Vital Records

May 16, 2018

CLEOPHAS BROWN
16155 MEREDITH CT
LINDEN MI 48451

RE: CPL 683528G

Dear Mr. Brown:

The following is the information you requested on the revocation of your Concealed Pistol License:

On 5/20/2015 you were convicted of Operating W/High BAC MCL 257.6251C. This is a 3-year disqualifying misdemeanor.

If you have any questions, please contact me at 248-858-0521.

Sincerely,

Kathy Craig
Office Leader
Oakland County Clerk – Vital Records

Administrative Offices
1200 N Telegraph Rd-Dept 413
Pontiac MI 48341-0413
(248) 858-0500
clerk6.oakgov.com

County Clerk's Office
1200 N Telegraph Rd-Dept 413
Pontiac MI 48341-0413
(248) 858-0581
clerk1.oakgov.com

Election Division
1200 N Telegraph Rd-Dept 413
Pontiac MI 48341-0413
(248) 858-0564
elections.oakgov.com

Register of Deeds Office
1200 N Telegraph Rd-Dept 480
Pontiac MI 48341-0480
(248) 858-0600
deeds.oakgov.com

Defendant's Motion to Dismiss with Brief

OC Fax Server

12/4/2017 10:08:42 PM PAGE 1/001 Fax Server

11/24/17 | 18:02:37.72 | LGWCCW | NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.

03984

A LGWCCW 3984 188259 11/24/17 1802 CLEMISCOMP3.

MI6316300

-

REVOKED LICENSE TO CARRY A CONCEALED PISTOL (CPL)

THIS INDIVIDUAL IS NOT ELIGIBLE TO CARRY A CONCEALED PISTOL.

LICENSE REVOCATION DATE:06/06/2015

***SERVED VERBAL NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.

***THIS REPOSEN SHALL NOT BE DISCLOSED TO ANY PERSON EXCEPT FOR PURPOSES
OUTLINED IN PUBLIC ACT 202 OF 2014 (MCL 28.421B).***

CPL:683528G LIC DATE:08/06/2013 EXP DATE:11/27/2017

NAM:BROWN/CLEOPHAS/ANDREW/ DOB:11/27/1955

RACE:B SEX:M HGT:600 WGT:200 HAI:BLK EYE:BRO

OLN:B650-119-067-906 SOC:363-66-2712

ADD:6601 SCENIC PINES CT CLARKSTON 48346

COU:63 - OAKLAND

LEOSA DATABASE RESPONSE:

NO LEOSA DATA FOUND

END OF CCW MESSAGE

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Prosecution's Response to Motion to Dismiss

OAKLAND
COUNTY

18-266476-FH



JUDGE D. LANGFORD MORRIS
PEOPLE v BROWN, CLEOPHA

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 2018-266476-FH
HON. DENISE LANGFORD-MORRIS

CLEOPHAS ANDREW BROWN,

Defendant.

JESSICA R. COOPER (P23242)
OAKLAND COUNTY PROSECUTING ATTORNEY
1200 NORTH TELEGRAPH ROAD
PONTIAC, MICHIGAN 48341

ZACHARY GLAZA (P80036)
ATTORNEY FOR THE DEFENDANT
920 HOFFMAN AVE
ROYAL OAK, MI 48067

BY: [Signature]
DEPUTY COUNTY CLERK

2019 JAN -8 PM 4:07

K. CH. ED. L. HUNG
OAKLAND COUNTY CLERK

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

NOW COMES Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by

Jeffrey D. Zeman, Assistant Prosecuting Attorney, and answers Defendant's motion as follows:

INTRODUCTION

The Defendant is charged in this case with one felony count of Carrying a Concealed Weapon, pursuant to MCL 750.227. He has also been charged with the misdemeanor offenses of Operating While Intoxicated, 2nd Offense (MCL 257.625) and Possession of a Firearm Under the Influence (MCL 750.237), neither of which is the subject of Defendant's instant motion. The Defendant's motion to dismiss the felony count pursuant to MCL 28.428 fails because the Defendant did receive notice that his concealed pistol license was suspended prior to his arrest in this case.

STATEMENT OF FACTS

On November 24, 2017 the Defendant was operating his 2016 Cadillac Escalade on Dixie Highway in Independence Township when he failed to maintain his lane and struck another vehicle. When Oakland County Sherriff's deputies arrived, the Defendant exhibit signs of intoxication, and was asked to step from his vehicle to perform field sobriety tests. Upon exiting his vehicle, Deputy Johnson conducted a pat-down of the Defendant's person for weapons, and located a .380 caliber handgun in the Defendant's right waistband, which was ultimately found to be loaded, with a round in the chamber. The Defendant failed the administered field sobriety tests, and provided a preliminary breath test sample of .232. The Defendant was thereafter placed under arrest. Deputy Rymarz checked the Defendant's concealed pistol license status via LEIN and learned that the Defendant's concealed pistol license had been revoked on June 6, 2015, and that the Defendant had been served verbal notice of the revocation by a peace officer.

ARGUMENT

The Defendant is criminally liable for Carrying a Concealed Weapon. Pursuant to MCL 28.428, an individual is not criminally liable for violating a suspension or revocation of his concealed pistol license, "unless he or she has received notice of the order." MCL 28.428(8). The Defendant argues that notice of his CPL revocation prior to the arrest on the instant charges was deficient, given the requirements of MCL 28.428 subsections (2) and (3); and that, therefore, he is immune from prosecution. However, the Michigan Court of Appeals has confronted this very issue, and it concluded that verbal notice is sufficient to satisfy the condition described in subsection (8):

The trial court did not err in denying defendant's pretrial motion to dismiss, given that, even if MCL 28.428 applied to a CCW charge brought under MCL 750.227, it is evident to us from the record that the licensing board was invoking subsection (3) of MCL 28.428 in support of the suspension and subsection (4) for the revocation. Therefore, personal service of the suspension notice or service of the notice by certified mail was not necessary. Moreover, assuming that subsection (2) was applicable and consistent with subsections (7) — (9) of MCL 28.428, even if personal service or certified mail was not utilized under subsection (2), **verbal notice given by a law enforcement agency or police officer can suffice as "notice" where a defendant is later stopped and is still carrying a concealed weapon despite the previous notice, thereby allowing an arrest and criminal liability.** There was evidence of verbal notice prior to the date on which defendant was arrested for the crimes at issue here. Accordingly, dismissal of the CCW charge would not have been proper.

People v. Fort, No. 298378, 2011 Mich. App. LEXIS 1641, at *10-14 (Ct. App. Sep. 22, 2011)(*Emphasis added*; full opinion attached). In this case, as in *Fort*, there is evidence that the Defendant was previously served verbal notice by a police officer that his concealed pistol license had been suspended. Consequently, any immunity from prosecution afforded individuals by MCL 28.428(8) does not bestow immunity upon this Defendant, as he had already received notice of the June 6, 2015 order revoking his concealed pistol license.

Prosecution's Response to Motion to Dismiss

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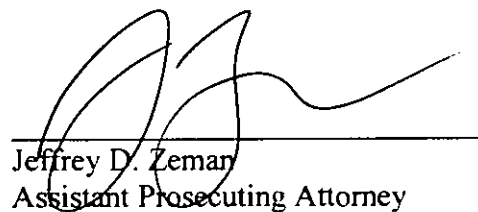
CONCLUSION

WHEREFORE, the People respectfully request that this Honorable Court deny the Defendant's motion to dismiss.

Respectfully submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY

By:



Jeffrey D. Zeman
Assistant Prosecuting Attorney

DATED: January 8, 2019

Prosecution's Response to Motion to Dismiss

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Neutral

As of: January 8, 2019 5:08 PM Z

People v. Fort

Court of Appeals of Michigan

September 22, 2011, Decided

No. 298378

Reporter

2011 Mich. App. LEXIS 1641 *; 2011 WL 4424346

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v JOVAN FORT, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Leave to appeal denied by *People v. Fort*, 2012 Mich. LEXIS 227 (Mich., Mar. 5, 2012)

Prior History: [*1] Oakland Circuit Court. LC No. 08-223943-FH.

Core Terms

notice, suspension, alcohol, license, arrest, revocation, pistol, licensing board, amended order, concealed weapon, trial court, ineffective, searches, receive notice, argues, consent to search, concealed, score, mail, box, assistance of counsel, suspension notice, center console, instructions, cigarette, carrying, requires

Judges: Before: MURPHY, C.J., and FITZGERALD and TALBOT, JJ.

Opinion

PER CURIAM.

Defendant Jovan Fort was convicted by a jury of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and carrying a concealed weapon in a vehicle (CCW), MCL 750.227. He was sentenced to concurrent terms of 180 days' imprisonment on the drug and CCW convictions, along

with a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case arises out of a traffic stop in which defendant was pulled over by police for having tinted windows and an inoperable license plate light. The police noticed the strong smell of alcohol emanating from defendant's vehicle. On obtaining consent from defendant to search the car, police discovered a pistol in the center console, 15 baggies of crack cocaine in a cigarette box located in a rear passenger cup holder, numerous empty baggies in a cigarette box in the center console, shotgun and handgun ammunition located in the back of the vehicle, cash, and defendant's [*2] CCW license, which had been suspended and revoked. Defendant claimed that he was unaware of the suspension and revocation having never received notice.

Defendant first argues that the trial court erred in finding that defendant gave the police broad, unlimited consent to search his car, where defendant only consented to a search for alcohol; therefore, the trial court erred in denying defendant's motion to suppress the drug and gun evidence, violating his Fourth Amendment rights.

A trial court's findings at a suppression hearing are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *Id.*

We hold that the trial court did not err in denying defendant's motion to suppress the evidence. The *Fourth Amendment of the United States Constitution* and *Const 1963, art 1, §11*, secure the right of the people to be free from unreasonable searches and seizures. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008). Searches conducted [*3] absent a

jeffrey zeman

Prosecution's Response to Motion to Dismiss

warrant are per se unreasonable aside from a few well-delineated exceptions. Katz v. United States, 389 U.S. 347, 357; 88 S.Ct. 507; 19 L.Ed.2d 576 (1967); People v. Reed, 393 Mich. 342, 362; 224 NW2d 867 (1975). These established exceptions to the warrant requirement include searches that are performed pursuant to the consent of the defendant. Florida v. Jimeno, 500 U.S. 248, 250-251; 111 S.Ct. 1801; 114 L.Ed.2d 297 (1991); In re Forfeiture of \$176,598, 443 Mich. 261, 266; 505 NW2d 201 (1993). Further, in Jimeno, 500 U.S. at 250-252, the United States Supreme Court explained and observed:

The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable. Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness — what would the typical reasonable person have understood by the exchange between the officer and the suspect? The question before [*4] us, then, is whether it is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine a paper bag lying on the floor of the car. We think that it is.

The scope of a search is generally defined by its expressed object. In this case, the terms of the search's authorization were simple. Respondent granted Officer Trujillo permission to search his car, and did not place any explicit limitation on the scope of the search. . . .

Respondent argues, and the Florida trial court agreed with him, that if the police wish to search closed containers within a car they must separately request permission to search each container. But we see no basis for adding this sort of superstructure to the Fourth Amendment's basic test of objective reasonableness. A suspect may of course delimit as he chooses the scope of the search to which he consents. But if his consent would reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization. [Citations omitted.]

In the present case, the police officer lawfully stopped defendant's vehicle and questioned him about the

[*5] smell of alcohol in the car. Defendant stated that he had not been drinking and that the alcohol had been spilled in the backseat of the car earlier in the day by a friend. Defendant expressly denied having anything illegal in the car. The officer then proceeded to ask defendant if he could search his vehicle and defendant responded by saying, "okay." A DVD from a police cruiser camera confirmed the verbal exchange. While walking back to his patrol car to check the Law Enforcement Information Network (LEIN), the officer shined his flashlight in the back of defendant's car. We note that the mere use of a flashlight does not constitute a search when the contents revealed would have been visible in ordinary daylight. People v. Edwards, 73 Mich. App. 579, 583; 252 NW2d 522 (1977). Moreover, consent had already been given by that time and nothing of relevance was observed through use of the flashlight. After running the LEIN check on defendant, the officer and a second officer went to defendant's vehicle and conducted the search, which produced the evidence alluded to above.

Based on the short but clear conversation between the officer and defendant, an objective and reasonable person would [*6] find that the officer had general, unlimited consent to search defendant's car. At the evidentiary hearing, defense counsel attempted to box the officer into a corner, seeking to elicit testimony that the officer was searching for something specific in relationship to his request for consent. The officer simply responded, "I asked for a consent to search the car." The officer acknowledged that the conversation was focused on alcohol prior to the request for consent; however, he did not testify, nor does the DVD show, that the actual request was framed in terms of consent solely to search for alcohol.

Defendant relies on and emphasizes his own testimony at the hearing where he stated, "[the officer] asked me to search my vehicle for open alcohol beverage[s]." This statement is not heard in the DVD of the stop and arrest, and defendant neglects to inform this Court that, on cross-examination, defendant admitted that the DVD did not reveal the words allegedly spoken by the officer. Defendant also conceded that he never told the officer that he could only search the car for alcohol. Although defendant claims that he believed the officer was only looking for alcohol, the footage from the [*7] DVD clearly reflects that there were no limitations with respect to the parameters of the search and could have reasonably involved "anything illegal." We note that after the officer obtained the unlimited consent to search the vehicle, went to his patrol car to run the LEIN, returned

Prosecution's Response to Motion to Dismiss

to defendant's vehicle, and before the search actually commenced, the officer made the statement that he was going to check the car to make sure that there was no open alcohol in the vehicle. However, at this point, and regardless of the statement, the officer had already obtained the unlimited consent to search defendant's car. Furthermore, searching the center console and the cigarette boxes inside the car was within the general scope of the consent given by defendant. In United States v. Ross, 456 U.S. 798, 825; 102 S Ct 2157; 72 L Ed 2d 572 (1982), the Court determined that general consent to a warrantless search extended to containers, even those not in plain sight.

Moreover, the smell of alcohol provided probable cause to search the car's center console regardless of any consent,¹ and even if the consent to a search was limited to a search for alcohol, as claimed by defendant, such consent would also [*8] provide a reasonable basis to search the console. People v. Kazmierczak, 461 Mich 411, 418-419; 605 NW2d 667 (2000); People v. Hellstrom, 264 Mich App 187, 192; 690 NW2d 293 (2004). Upon finding the gun in the center console, there was probable cause to search for weapon-related evidence in the vehicle, and the police were of course free to continue searching for alcohol. It would be reasonable to search for items such as ammunition in the cigarette boxes, one of which contained cocaine. In fact, a cigarette box, which appears to have been a carton and not an individual pack, could also conceal alcohol. Additionally, the search did not require the exclusion of the evidence, as it was a search made in good faith incident to arrest.² While the search may have violated the principles in Arizona v. Gant, 566 U.S. 129 S Ct 1710; 173 L Ed 2d 285 (2009), relative to searches incident to arrest, Gant had not been decided when the search was conducted here. The Supreme Court has now ruled that although Gant is to be applied retroactively, the good-faith exception to the exclusionary rule is applicable where officers relied on the ruling in New York v. Belton, 453 U.S. 454; 101 S Ct 2860; 69 L Ed 2d 768 (1981),³ [*9] at the time of the

search at issue. Davis v. United States, 564 U.S. 131 S Ct 2419; 171 L Ed 2d 1186 (2011). The Court held that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." Id. at 2423. Because the present incident took place before Gant was decided, the good-faith exception to the exclusionary rule applies. There is no evidence in the record even remotely suggesting that the police searched defendant's vehicle in any manner other than good faith.

Defendant next argues that he could not be convicted of CCW under MCL 750.227⁴ unless he had been properly notified pursuant to MCL 28.428⁵ that his CCW license

generally.

⁴ The CCW statute, MCL 750.227, provides in pertinent part:

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such a license.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than \$2,500.00.

⁵ MCL 28.428 provides in relevant part:

(2) Except as provided in subsections (3), (4), and (5), a license shall not be revoked under this section except upon written complaint and an opportunity for a hearing before the board. The board shall give the individual at least 10 days' notice of a hearing under this section. The notice shall be by personal service or by certified mail delivered to the individual's last known address.

(3) [*11] If the concealed weapon licensing board is notified by a law enforcement agency or prosecuting official that an individual licensed to carry a concealed pistol is charged with a felony or misdemeanor as defined in this act, the concealed weapon licensing board shall immediately suspend the individual's license until there is a final disposition of the charge for that offense and send notice of that suspension to the individual's last known address as indicated in the records of the concealed weapon licensing board. The notice shall inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board shall conduct a prompt hearing if requested in writing by the individual. The requirements of subsection

¹ Automobile searches are another exception to the warrant requirement. In re Forfeiture, 443 Mich at 266.

² A search incident to arrest is another exception to the warrant requirement. In re Forfeiture, 443 Mich at 266.

³ Belton was widely understood to have authorized an automobile search incident to arrest of a recent occupant, regardless of whether the arrestee was within reaching distance of the vehicle at the time of the search. See Gant

Prosecution's Response to Motion to Dismiss

had been suspended and revoked; therefore, the [*10] trial court erred in denying his pretrial motion to dismiss the charges and erred in crafting the jury instructions.

A trial court's decision to deny a motion to dismiss criminal charges is reviewed for an abuse of discretion; however, we review de novo underlying questions of law associated with the motion. *People v Owen*, 251 Mich App 76, 78; 649 NW2d 777 (2002); *People v Kevorkian*, 248 Mich App 373, 383; 639 NW2d 291 (2001). Jury instructions or claimed instructional errors involving legal questions are reviewed de novo, although a court's determination that an instruction applies to the facts of the case is reviewed for an abuse of discretion. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010). With respect to preserved constitutional issues, which include claims of inadequate jury instructions relative to the elements of a crime, the Court must rule on whether or not any error was harmless beyond a reasonable doubt. *United States v Gaudin*, 515 U.S. 506, 510; 115

S Ct 2310; 132 L Ed 2 444 (1995); People v Carines, 460 Mich 750, 761, 774; 597 NW2d 130 (1999); *People v Wright*, 408 Mich 1, 26-30; 289 NW2d 1 (1980).

The trial court did not err in denying defendant's pretrial motion to dismiss, [*14] given that, even if *MCL 28.428* applied to a CCW charge brought under *MCL 750.227*, it is evident to us from the record that the licensing board was invoking subsection (3) of *MCL 28.428* in support of the suspension and subsection (4) for the revocation.⁶ Therefore, personal service of the suspension notice or service of the notice by certified mail was not necessary. Moreover, assuming that subsection (2) was applicable and consistent with subsections (7) — (9) of *MCL 28.428*, even if personal service or certified mail was not utilized under subsection (2), verbal notice given by a law enforcement agency or police officer can suffice as "notice" where a defendant is later stopped and is still carrying a concealed weapon despite the previous notice, thereby allowing an arrest and criminal liability. There was evidence of verbal notice prior to the date on which defendant was arrested for the crimes at issue here. Accordingly, dismissal of the CCW charge would not have been proper.

With respect to the CCW jury instruction, assuming error relative to the issue of notice based on *MCL 28.428* or constitutional due process principles, we find that the claimed error was harmless beyond a reasonable doubt. Defendant was permitted by the trial court to argue lack of notice as a theory of defense in regard to the CCW charge, and the court itself instructed the jury on said theory.⁷ Therefore, even if the specific CCW instruction was problematic or confusing on the issue of notice, the

(2) do not apply to this subsection.

(4) The concealed weapon licensing board that issued a license to an individual to carry a concealed pistol shall revoke the license if the board determines that the individual is not eligible under this act to receive a license to carry a concealed pistol. The concealed weapon licensing board shall immediately send notice of the fact of and the reason for the revocation order under this subsection [*12] by first-class mail to the individual's last known address as indicated on the records of the concealed weapon licensing board. The requirements of subsection (2) do not apply to this section.

(7) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.

(8) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

(9) If a law enforcement agency or officer notifies an individual of a suspension or revocation order or amended order issued under this section who has not previously received notice of the order or amended order,

the law enforcement agency or officer shall enter a statement into the law enforcement [*13] information network that the individual has received notice of the order or amended order under this section.

⁶The suspension notice was dated the same day that defendant was arrested for malicious destruction of property. Also, there was no evidence of a "written complaint," an immediate suspension was issued, which [*15] is not provided for in subsection (2), and a regular mailing was utilized. We do agree, however, that a suspension pursuant to subsection (3) was improper because the prosecution declined to charge defendant with malicious destruction of property. Defendant never showed up at the scheduled hearing on the suspension.

⁷We note that the jury was present when the trial court overruled the prosecutor's objection that examination of defendant on notice matters was irrelevant.

Prosecution's Response to Motion to Dismiss

jurors well understood that inadequate notice would support an acquittal; why else would defendant argue lack of notice and the court set forth the theory. The jurors likely considered and rejected the argument that defendant was not on notice of the suspension and revocation. Furthermore, there was strong evidence that defendant received notice, such that the giving of a CCW [*16] instruction that more adequately addressed the notice issue would still have resulted in a guilty verdict. An officer who pulled defendant over about six months earlier than the stop involved in the case at bar testified that he gave defendant notice of the suspension. The officer further testified that the LEIN check relative to that earlier stop indicated that defendant had previously been given verbal notice of the suspension. Considering that defendant was arrested and charged in that case with carrying a loaded firearm in a vehicle other than a pistol, MCL 750.227c, and later pled guilty, it would defy logic to believe that the suspension and revocation never came to defendant's attention during that whole process. Additionally, the suspension letter and the revocation letter from the licensing board to defendant were admitted into evidence. Any presumed instructional error was harmless beyond a reasonable doubt.

Finally, defendant argues that there were multiple instances of ineffective assistance of counsel. A claim of ineffective [*17] assistance of counsel presents a mixed question of fact and constitutional law, which this Court reviews, respectively, for clear error and de novo. People v LeBlanc, 465 Mich 575, 579; 640 NW2d 246 (2002). Where claims of ineffective assistance of counsel were not preserved below, as is the case here, our review is limited to errors and mistakes apparent on the record. People v Matuszak, 263 Mich App 42, 48; 687 NW2d 342 (2004).

Effective assistance of counsel is presumed and the defendant has a heavy burden to prove otherwise. People v Leonard, 224 Mich App 569, 592; 569 NW2d 663 (1997). The Sixth Amendment entitles criminal defendants to effective assistance of counsel, that is, representation that does not fall below an objective standard of reasonableness in light of prevailing professional norms. Bobby v Van Hook, 558 U.S. 130 S Ct 13; 175 L Ed 2d 255 (2009). As the United States Supreme Court established in Strickland v Washington, 466 U.S. 668, 686-687; 104 S Ct 2052; 80 L Ed 674 (1984):

[T]he right to counsel is the right to the effective assistance of counsel. Government violates the

right to effective assistance when it interferes in certain ways with the ability of counsel [*18] to make independent decisions about how to conduct the defense. Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render adequate legal assistance.

[T]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. [*19] Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be that the conviction resulted from a breakdown in the adversary process that renders the result unreliable. [Citations omitted.]

The defendant must show that but for defense counsel's errors, there was a reasonable probability that the result of the proceedings would have been different and the result that did occur was fundamentally unfair or unreliable. Id. at 694; People v Davenport, 280 Mich App 464, 468; 760 NW2d 743 (2008). The defendant must overcome the presumption that the challenged action or inaction was sound trial strategy, and this Court will not substitute its judgment for that of counsel in hindsight. People v Rice (On Remand), 235 Mich App 429, 445; 597 NW2d 843 (1999); Leonard, 224 Mich App at 592.

In the present case, defendant argues that he was denied the right to the effective assistance of counsel when trial counsel did not present evidence at the pretrial hearing on the motion to dismiss [*20] and at trial showing that he was never charged with malicious destruction of property, despite being arrested for the offense. Subsection (3) of MCL 28.428 only requires notice by ordinary mail sent to a person's last known address, but it also clearly indicates the necessity of a

Prosecution's Response to Motion to Dismiss

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2011 Mich. App. LEXIS 1641, *20

charge being brought against the license holder for committing a felony or misdemeanor; an arrest alone does not suffice. Accordingly, defendant's argument here is that counsel was ineffective at the hearing and trial for not presenting evidence and not arguing that the suspension and revocation were legally invalid. Contrary to defendant's argument, the pretrial motion to dismiss touched on the lack of charges emanating from the arrest for malicious destruction of property, and defense counsel attached as exhibits the documents showing that defendant was never charged with a crime. Defendant is correct, however, that the evidence and argument was not presented at trial. Nevertheless, defendant fails to explain or provide an analysis with respect to why he is entitled to collaterally attack the validity of the suspension and revocation at his criminal trial, especially when there was substantial evidence [21] that defendant received notice and no indication that defendant ever approached the licensing board about its actions. And again, any issues concerning notice do not warrant reversal. The requisite prejudice has not been established.

Defendant also argues ineffective assistance of counsel relative to counsel's failure to be prepared with caselaw in support of the argument that the officer's brief use of a flashlight to quickly glance into the car as he walked by it constituted a constitutionally deficient search. This argument fails because there was no resulting prejudice to defendant, where the officer's action did not implicate Fourth Amendment protections, Edwards, 73 Mich App at 583, where there was probable cause to glance into the car, where nothing of relevance was observed by the officer, and where defendant had already given his consent for the officer to search the vehicle.

Finally, defendant argues that counsel was ineffective at the sentencing hearing, where OV 15 was initially scored at zero, the prosecutor stated that it should be scored at 5 points, defense counsel objected to any change but could not articulate a sound basis for the objection and indicated that she was [22] not prepared to address the matter, and where the court changed the score to 5 points. The first problem with this argument is that defendant does not claim that a score of 5 points was legally incorrect. Further, defendant does not argue that the scoring difference affected the sentencing range. Finally, a score of 5 points was proper, given that the "offense involved the . . . possession with intent to deliver . . . any . . . controlled substance[.]" MCL 777.45(1)(g). Accordingly, an ineffective assistance claim was not established.

Affirmed.

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

 End of Document

jeffrey zeman

Motion Hearing Transcript

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE
STATE OF MICHIGAN

v

Case No. 18-266476-FH

CLEOPHAS ANDREW BROWN,

Defendant./

EVIDENTIARY HEARING

ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

BEFORE THE HONORABLE DENISE LANGFORD MORRIS, CIRCUIT JUDGE

Pontiac, Michigan - Wednesday, January 23, 2019

APPEARANCES:

For the People:

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Transcribed by: Susan G. Johnson, CER 3511

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PAGE

PX 1	Notice of revoked CPL from LEIN system.....	15
PX 2	Certified records from Oakland County Clerk's Office..	15

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Pontiac, Michigan

Wednesday, January 23, 2019, at 10:01 a.m.

* * * * *

THE CLERK: Calling docket number 21, People
versus Brown, case number 18-266476-FH.

THE COURT: Appearances?

MR. ZEMAN: Jeff Zeman appearing on behalf of
the People.

Counsel's in the hall.

THE COURT: Okay, we're going to --

We're ready for you. I need counsel to get set
up at counsel table.

This matter's passed.

I see defense counsel's here.

Call the next case.

Get set up.

(At 10:01 a.m., case passed)

(At 10:02 a.m., case recalled)

THE CLERK: Recalling docket number 21, People
versus Brown, case number 18-266476-FH.

THE COURT: Appearances, please.

MR. ZEMAN: Jeff Zeman appearing on behalf of
the People.

MR. GLAZA: Zack Glaza on behalf of Cleophas
Brown.

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1 THE COURT: You may be seated.

2 All right. What's the motion?

3 This is your officer-in-charge. He's trying to
4 get to counsel table.

5 MR. ZEMAN: Oh.

6 UNIDENTIFIED SPEAKER: Thank you, your Honor.

7 THE COURT: Take a seat, officer.

8 All right. What are we here for? It's an
9 evidentiary relative to what?

10 MR. ZEMAN: We're here on defendant's motion, if
11 you would like to hear from defense counsel with regard to
12 (indiscernible) --

13 THE COURT: No, no. I just want to know what
14 kind of evidentiary hearing are we having, --

15 MR. ZEMAN: Yes, your Honor, --

16 THE COURT: -- for the record.

17 MR. ZEMAN: For the record, this is defendant's
18 motion to dismiss with regard to Count 1, the count of
19 CCW, your Honor, carrying a concealed weapon --

20 THE COURT: Okay, I thought it was a motion to
21 suppress.

22 MR. GLAZA: (Indiscernible) dismiss.

23 MR. ZEMAN: It is. So the dismissal is per
24 defendant's position, and both sides have preliminarily
25 briefed the issue prior to any evidence being in front of

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1 this Court, obviously --

2 THE COURT: This is relative to the arrest?

3 MR. ZEMAN: This is relative to the CCW statute.

4 So, your Honor, if I -- MCL --

5 THE COURT: Okay. Let me just ask this.

6 MR. ZEMAN: Yes.

7 THE COURT: Do you both agree as to what you're
8 here for --

9 MR. ZEMAN: Yes.

10 THE COURT: -- relative to an evidentiary
11 hearing?

12 MR. ZEMAN: Yes, your Honor.

13 MR. GLAZA: Yes, we do.

14 THE COURT: Can somebody state that succinctly
15 for me?

16 MR. ZEMAN: Go ahead, counsel.

17 MR. GLAZA: Yes. Your Honor, we're here because
18 my position is that the arrest was not lawful because as
19 per the CPL suspension statute that describes the notice
20 that is required, it specifically says that a person
21 cannot be arrested or criminally liable for violation of a
22 revocation order, which is what we have here, unless he's
23 received notice.

24 THE COURT: Okay.

25 MR. GLAZA: And we don't have any evidence that

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1 he's received notice.

2 MR. ZEMAN: Your Honor, I would just caveat that
3 I don't agree with defense counsel's wording that the
4 arrest was unlawful. There are, of course, --

5 MR. GLAZA: Just for that particular crime.

6 MR. ZEMAN: Okay.

7 MR. GLAZA: Yeah. I'll limit that to that.
8 Just for the particular crime of CCW.

9 MR. ZEMAN: So the issue, then, under --
10 pursuant to MCL 28.428, and this is specifically in regard
11 to the language of subsection 8 of that statute, is with
12 regard to defendant's criminal liability --

13 THE COURT: Okay.

14 MR. ZEMAN: -- for carrying a concealed weapon,
15 your Honor. And that's --

16 THE COURT: So noted.

17 MR. ZEMAN: -- the issue today. And I think --
18 As defense counsel stated correctly the issue before the
19 Court is whether the defendant had notice that his CPL had
20 been --

21 THE COURT: So noted.

22 MR. ZEMAN: -- suspended or revoked at the time
23 of the arrest.

24 THE COURT: Okay. I just want you both on the
25 same page. Okay?

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1 MR. ZEMAN: Yes, your Honor. And that's the
2 scope of the hearing.

3 THE COURT: All right. So that's what you're
4 here for.

5 Opening statements?

6 MR. GLAZA: I can begin, your Honor.

7 THE COURT: Okay. Go right ahead.

8 MR. GLAZA'S OPENING STATEMENT

9 MR. GLAZA: Your Honor, I trust that the Court
10 has reviewed my written submission, as well as the
11 People's submission, so I'll use my opening statement to
12 address some of the things that are brought up in the
13 People's --

14 THE COURT: Go right ahead.

15 MR. GLAZA: -- position.

16 The People are arguing that Brown is criminally
17 liable for CCW and not entitled to the protection
18 described in MCL 28.428 because he received verbal notice
19 of revocation of the CPL prior to the date of the arrest.

20 And so in presenting that position, they cite
21 People v Fort for the proposition that verbal notice is
22 sufficient to qualify as notice, notwithstanding the
23 particularity of 28.428 that says that notice is supposed
24 to be sent by first-class mail to an address and have a
25 myriad of information and documentation sent along with

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1 it. But nonetheless, Fort, an unpublished case, says that
2 verbal notice is sufficient.

3 I believe that Fort is distinguishable for Mr.
4 Brown's case. In Fort, there was evidence of verbal
5 notice prior to the date that the defendant in Fort was
6 arrested. But Brown didn't get notice.

7 There's no evidence that he received notice of
8 the initial suspension, once he was recharged with OWI in
9 2014. I would refer to that as a subsection 2 notice. So
10 MCL 28.428 subsection 2 describes a notice sent to a CPL
11 holder that the license is suspended pending resolution of
12 the matter. So there's no evidence that he got that
13 notice.

14 And then, subsection 3 of that same section of
15 the statute describes notice that has to be sent upon
16 revocation.

17 So there's two separate notice requirements.

18 There's no evidence that Brown got either.

19 And I think this is supported by the fact that
20 the People requested documentation, the entire record from
21 the clerk's office pertaining to Mr. Brown's CPL. And
22 amongst that record, there is a timeline of events,
23 correspondence and communications with Mr. Brown. And
24 nowhere in that timeline or amongst the documentation that
25 was provided by the clerk does it describe either a

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1 section 2 notice of suspension as a pending resolution or
2 a section 3 notice of revocation. There's no mention of
3 either one of those things.

4 Furthermore, the LEIN notice that was attached
5 to my motion, it's an entry from the Law Enforcement
6 Information Network system. And that entry, I think
7 supports our position that Mr. Brown's first notice of
8 revocation of his license was the day he was arrested. At
9 the top of that notice in bold print it says 11/24/17 6:02
10 in the afternoon. It's notice of revoked CPL by a peace
11 officer.

12 The same statute that I'm citing for the
13 suspension provision is 28.428 section 10 says that at any
14 time a peace officer gives somebody notice that their CPL
15 is revoked, and that's the first notice they receive,
16 they're supposed to enter that into LEIN. Had it been --
17 Had he received notice at any point prior to the arrest,
18 then there would have been an entry to the LEIN that
19 reflected the date that that notice was given. I don't
20 believe that this LEIN notice that we have here reflects
21 that it was given before that time. The heading clearly
22 says that it was the day of the arrest at 6:02. And the
23 only other relevant date on there is 6/6/15 which is the
24 date that the revocation became effective after he was
25 convicted of OWI in 2015.

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1 The People contend that he received verbal
2 notice. I'm not sure when they are proposing that Mr.
3 Brown received verbal notice. It's not stated in the
4 People's response. And like I said, the only other date
5 on that LEIN notice is the revocation date.

6 So it doesn't appear to me that he received
7 notice at any point. The clerk doesn't have any letter,
8 any record of a correspondence, or any letter that was
9 sent out. They certainly would maintain such records, as
10 the statute is specific as to what is required when it
11 says that you have to send notice by first-class mail, the
12 statutory reason for the suspension, the source of the
13 record supporting the suspension, the length of
14 suspension, who to contact for errors. There's a lot of
15 stuff that you're supposed to send. So it would seem
16 obvious to me that the clerk would maintain records of
17 such notices sent out; and, apparently, they didn't have
18 anything as they didn't produce everything. So it's my
19 understanding that there is no other evidence that notice
20 was given.

21 So I believe that according to what is laid out
22 in Section 28.428, specifically section 8, which I've
23 characterized in my motion, just for clarity, as a
24 qualified immunity, it says that a suspension or
25 revocation order issued under this section is effective;

1 but an individual is not criminally liable for violating
2 that order unless he has -- unless he or she has received
3 notice of that order.

4 And furthermore, section 9 discusses a remedy
5 provision in the event that the person had not received
6 notice. And what that says is that if they haven't
7 received notice then they are entitled to an opportunity
8 to otherwise -- to store the pistol or otherwise comply
9 with the revocation order before an arrest is made for
10 carrying a pistol in violation of that order.

11 So I believe if the first notice that Mr. Brown
12 received was the day he was arrested for CCW that he was
13 entitled to, at the very least, that remedy provision. I
14 believe he was entitled to both. But at the time, he
15 should have been given the opportunity to comply to store
16 his pistol; and, therefore, could not be charged with the
17 CCW or arrested for the CCW. And the underlying charge
18 would not lie if he shouldn't have been arrested for it.

19 THE COURT: Okay.

20 MR. ZEMAN'S OPENING STATEMENT

21 MR. ZEMAN: Your Honor, it's the People's
22 position that the evidence at this evidentiary hearing
23 will show that the defendant had, prior to his arrest,
24 received notice. The People anticipate that Deputy
25 Rymarz, who is the Oakland County Sheriff's deputy who

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1 looked up the defendant's concealed pistol license status
2 at the time of the arrest, will testify that the header at
3 the top of the LEIN lookup that the defendant -- the
4 defense counsel referenced in his opening statement that
5 indicates November the 24th, 2017, at 18:02 hours is with
6 regard to the time that the look-up was done, and it has
7 nothing to do with the time at which defendant was given
8 notice.

9 THE COURT: What was the date of arrest, for the
10 record?

11 MR. ZEMAN: The date of arrest was November 24,
12 2017.

13 THE COURT: Okay.

14 MR. ZEMAN: At approximately that time, your
15 Honor.

16 Consequently, the People have provided to the
17 Court and have provided to the counsel -- to defense
18 counsel a copy of People versus Fort, which --

19 THE COURT: Cite that.

20 MR. ZEMAN: And that is -- That is an
21 unpublished case, your Honor.

22 THE COURT: Okay, no cite.

23 MR. ZEMAN: And again, the --

24 THE COURT: What's the date of it?

25 MR. ZEMAN: The date of the case is

1 September 22, 2011. And it makes reference specifically
2 with regard to the portion of the concealed pistol license
3 statute that's at issue here today, your Honor. That's
4 whether subsection 8, the language of which says unless he
5 or she has received notice of the order that verbal notice
6 is sufficient. There is nothing in that subsection that
7 indicates that notice to the defendant had to comply with
8 subsection 2 of that same statute, which sets out the
9 parameters for the county clerk.

10 Now, it's the People's position that this is
11 just with regard to the -- just general fairness. If the
12 defendant didn't know that his CPL suspended, the statute
13 makes some provisions for the remedy for that, which is
14 that, you know, on this occasion if he didn't know before
15 now, you know, he could properly store his gun and then be
16 on his way. That's with regard to subsection 9.

17 In this particular case, however, there is
18 evidence that the defendant did have prior notice of his
19 suspension. And Deputy Rymarz will testify that it was
20 recorded in the LEIN and the defendant had been given
21 prior verbal notice by a police officer. So he was on
22 notice and, therefore, is criminally liable.

23 THE COURT: Okay.

24 Who's the first witness?

25 MR. ZEMAN: Deputy Rymarz. However, I would --

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1 I forgot to ask counsel before we got started about two
2 proposed exhibits which are, as yet, unmarked because I'm
3 without stickers. I apologize. I --

4 THE COURT: Just consider them marked. Put a
5 one on it, two, or whatever you got.

6 MR. ZEMAN: People's proposed exhibit one is the
7 LEIN entry with which we've made reference. And People's
8 proposed exhibit two are the certified records from the
9 clerk's office that counsel made reference to with regards
10 to the history.

11 I will -- And the parties --

12 THE COURT: And one is what?

13 MR. ZEMAN: One is the notice of -- the notice
14 of revoked CPL license by peace officer, a record that
15 Deputy Rymarz looked up at the time of the arrest and --

16 THE COURT: It's like a partial LEIN record?

17 MR. ZEMAN: That's right. It's just the page
18 that is with regard to the defendant's --

19 THE COURT: Okay.

20 MR. ZEMAN: -- CPL status.

21 And People's proposed two is the entirety of --

22 THE COURT: Yes, certified records.

23 MR. ZEMAN: -- the certified records from --

24 THE COURT: I got that. Okay.

25 MR. ZEMAN: -- Oakland County. I would --

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1 THE COURT: Is that a stipulation now?

2 MR. GLAZA: Yes, I'll stipulate.

3 THE COURT: Okay. One and two are admitted.

4 (At 10:15 a.m., PX 1 and PX 2 admitted)

5 MR. ZEMAN: Thank you, your Honor, although I --
6 there's also a stipulation there is a typo on the cover of
7 the records from the clerks on the --

8 THE COURT: Okay. What are you referring to
9 now? Which exhibit?

10 MR. ZEMAN: This is People's proposed two -- or
11 People's exhibit two, now that it's been admitted.

12 THE COURT: What's the stipulation?

13 MR. ZEMAN: The stipulation is that on the
14 second bullet point on the page -- on the page starting
15 with --

16 THE COURT: On page one?

17 MR. ZEMAN: On page one. That there was a date
18 of November 5, 2013 referenced in that paragraph. That
19 should be November 5, 2014. And both parties --

20 THE COURT: It says November 5th -- What does it
21 say?

22 MR. ZEMAN: '13.

23 THE COURT: 2013?

24 MR. ZEMAN: Yep, it's --

25 THE COURT: And it should be twenty . . . ?

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1 MR. ZEMAN: '14.
2 THE COURT: So stipulated?
3 MR. GLAZA: So stipulated, your Honor.
4 THE COURT: So ordered.
5 MR. ZEMAN: And should I present the exhibits to
6 the Court?
7 THE COURT: No, not now.
8 MR. ZEMAN: Okay.
9 THE COURT: I don't need them.
10 MR. ZEMAN: All right.
11 THE COURT: Okay, let's proceed with the first
12 witness now. You've got your stipulations. We've got
13 People's exhibits one and two are admitted, with exhibit
14 two as to the second bullet point on page one of exhibit
15 two, the November 5, 2013 date is corrected pursuant to
16 stipulation to November 5, 2014.
17 All right. Who's the first witness?
18 MR. ZEMAN: The People call Deputy Rymarz, your
19 Honor.
20 THE COURT: Right this way, deputy.
21 Do you swear to tell the truth, the whole truth,
22 so help you God?
23 DEPUTY RYMARZ: I do.
24 THE COURT: All right. Please be seated. State
25 your full name for the record, please.

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1 THE WITNESS: Deputy Eric Rymarz, R-y-m-a-r-z.
2 ERIC RYMARZ
3 called by the People at 10:16 a.m., sworn by the Court,
4 testified:
5 DIRECT EXAMINATION
6 BY MR. ZEMAN:
7 Q Deputy Rymarz, how are you currently employed?
8 A The Oakland County Sheriff's Office.
9 Q And in what role?
10 A I'm currently assigned to the Crash Reconstruction Unit.
11 THE COURT: To the what?
12 THE WITNESS: Crash Reconstruction Unit.
13 THE COURT: Okay.
14 BY MR. ZEMAN:
15 Q Were you previously employed as a road patrol deputy for
16 the sheriff's office?
17 A Yes.
18 Q Were you employed as a road patrol deputy on November
19 the 24th of 2017?
20 A That particular night I was working alcohol enforcement
21 grant.
22 Q Alcohol enforcement?
23 A Correct.
24 Q And what are your duties on alcohol enforcement?
25 A Be on the lookout for intoxicated drivers.

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1 Q On that night, were you called to the scene of a stop of a
2 possible intoxicated driver?

3 A I was.

4 Q Do you recall to -- I'm sorry. Were you -- You probably
5 -- You may have been called to a number of them.

6 Specifically, were you called to a stop at Dixie Highway
7 near Deer Lake Road in Independence Township?

8 A Yes.

9 Q At approximately what time was that, if you recall?

10 A If I recall, it was about six in the evening.

11 Q Okay.

12 THE COURT: So that's November 24th at
13 approximately 6:00 p.m.? Officer?

14 THE WITNESS: Correct.

15 THE COURT: Deputy.

16 Go ahead.

17 BY MR. ZEMAN:

18 Q Deputy Rymarz, was -- had a suspect already been
19 identified with regard to the drunk driving at that time?

20 A Yes.

21 Q Is that person in the courtroom right now?

22 A Yes.

23 Q Could you please point to him and describe something he's
24 wearing?

25 A A grey suit jacket.

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1 MR. ZEMAN: Your Honor, may the record reflect
2 an in-court identification of the defendant?

3 THE COURT: So ordered.

4 BY MR. ZEMAN:

5 Q Had you been informed in the course of your investigation
6 that the defendant was in possession of a pistol in his
7 vehicle?

8 A Correct.

9 Q And did you attempt to make some determination as to
10 whether the defendant had a concealed pistol license that
11 was valid at that time?

12 A I did.

13 Q How did you make that determination?

14 A I called our dispatch center and had them run a -- what we
15 call a CCW check. And they indicated that he was -- that
16 his CPL was not valid.

17 Q Were you able to determine at that time whether or not the
18 defendant had been previously notified that his CPL had
19 been revoked -- or was not valid?

20 A No.

21 Q You were not able to determine it at that time?

22 A Not at that time.

23 Q Okay. At some point in the course of your investigation
24 were you able to determine whether the defendant had been
25 previously notified of his CPL status?

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1 A Yes.

2 Q How did you determine -- First of all, when did you
3 determine that?

4 A It was shortly after the arrest. A few days after the
5 arrest. Maybe a week.

6 Q Okay. Did you -- How did you make that determination?

7 A I contacted -- her name's Cathy at the clerk's office that
8 deals with CCW permits.

9 Q Okay. Now, are you -- In those instances where -- prior
10 to actually reaching out to the clerk's office to -- with
11 regard to the CPL status, is there somewhere that you can
12 look that up electronically at the time of an arrest?

13 A Not to my knowledge.

14 Q Not to your knowledge? With regard to -- specifically now
15 (indiscernible) ask about People's proposed exhibit one.

16 MR. ZEMAN: May I approach the witness, your
17 Honor?

18 THE COURT: Yes.

19 BY MR. ZEMAN:

20 Q Deputy, I'm handing you People's -- Well, it's People's
21 exhibit one. It's already been admitted per stipulation.
22 Do you recognize this?

23 A Yes.

24 Q What is this?

25 A This is the notice that LEIN had faxed to me indicating

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1 that he has been served verbal notice.

2 Q Okay. When did you -- Have you seen this before?

3 A Yes.

4 Q When did you first see this?

5 A The night of the arrest.

6 Q Okay, so what -- I mean, what is this -- What does it say
7 exactly?

8 A Well, it indicates to me that his CPL is -- is not valid.

9 Q Okay. So there is some electronic record that his CPL was
10 not valid at the time of his arrest?

11 A I thought you meant in addition to this.

12 Q Oh, no.

13 A Yes. Yes, this is the only --

14 Q Okay.

15 A The night of the arrest, this is the only -- this is the
16 only thing that I had at the night of the arrest
17 indicating that his CPL was not valid.

18 Q Okay. So you were in possession of --

19 THE COURT: I'm sorry. Wait a minute.

20 You're pointing to a piece of paper that's been
21 admitted as People's one. The night of the arrest, did
22 you have that piece of paper in your hand?

23 THE WITNESS: I was notified by dispatch that
24 this existed. Later on, I was able to get it.

25 THE COURT: Okay. So that paper was not in your

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1 hand the night of the arrest?

2 THE WITNESS: Correct.

3 THE COURT: So what, if any, determination did
4 you make relative to the findings on People's number one
5 the night of the arrest?

6 THE WITNESS: I contacted --

7 THE COURT: You didn't see anything. All you
8 did is you heard from the dispatcher that his CPL was not
9 valid, correct?

10 THE WITNESS: Correct.

11 THE COURT: Verbally from the dispatcher.
12 That's who you heard from?

13 THE WITNESS: Correct.

14 THE COURT: There's nothing that came across on
15 a screen in your patrol vehicle that showed that?

16 THE WITNESS: Correct.

17 THE COURT: Okay. Go ahead.

18 MR. ZEMAN: Thank you, your Honor.

19 BY MR. ZEMAN:

20 Q Deputy Rymarz, with regard to the heading on People's
21 exhibit one where it indicates November 24, 2017, I think
22 approximately 1800 hours, what is that heading with
23 reference to that date and time?

24 A When it was ran.

25 Q Is that to say that when somebody looked up this

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1 information?

2 A Correct.

3 Q The information contained in People's exhibit one?

4 A Correct.

5 Q Is that with reference to the time at which notice was
6 given to the subject of the LEIN lookup that the CPL was
7 revoked?

8 A No. No, this is the date that the dispatcher had ran the
9 CPL status.

10 Q Okay. Now, did that indicate to you, People's one, that
11 the defendant had prior to that date and time been
12 notified that his CPL was revoked?

13 A It does indicate that he was served verbal notice.

14 Q Okay. And do you -- Was it you who had done that on the
15 night of this arrest?

16 A No.

17 Q Do you know who did that?

18 A No.

19 Q But to your knowledge, is this a record that's regularly
20 kept with regard to individual CPL status?

21 A It is.

22 Q And you looked --

23 MR. ZEMAN: The People have nothing further at
24 this time, your Honor.

25 THE COURT: You may cross-examine.

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1 MR. GLAZA: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. GLAZA:

4 Q Deputy Rymarz, thank you for your time.

5 A Sure.

6 Q Good morning. A couple questions for you.

7 So, Deputy Rymarz, are you familiar with the law
8 that requires a peace officer to make an entry into LEIN
9 when they give notice to somebody that there's been a
10 revocation as, you know, is reflected in the paper that
11 you have in your hands?

12 A Generally, yes.

13 Q So have you ever had occasion to have to do that in your
14 professional career?

15 A No.

16 Q Have you ever -- Are there similar acts that you've had to
17 do in your career where you enter something in LEIN for
18 the sake of memorializing something when it happened?

19 A Yes.

20 Q And typically when you make such an entry, what type of
21 information do you enter?

22 A Well, it depends on specifically what I'm -- what I'm
23 entering in.

24 Q Well, let me put it this way: If you are entering
25 something that you had informed somebody of something or

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1 given them notice of something, would you -- would it
2 record who put it in, when they put it in, the nature of
3 what the interaction was?

4 A It's been some time since I've -- since I've done that. I
5 would think that it would, yes.

6 Q Okay. But as far as this particular -- you haven't -- You
7 haven't done this before? You haven't entered into LEIN
8 when you've given somebody a notice of a revoked CPL?

9 A Correct. I have not.

10 Q Okay. And referring to People's exhibit one, when you
11 look at that, and you testified that you believe that the
12 heading at the top just reflects when it was pulled by
13 whomever pulled that record?

14 A That is the case.

15 Q But it does say the date of the arrest and the approximate
16 time that you described, and it says notice of revoked CPL
17 by a peace officer. What do you think this indicates?
18 That the -- You believe that indicates that the notice
19 happened sometime in the past?

20 A Yes.

21 Q And Deputy Rymarz, could you describe to me where on that
22 sheet of paper it describes when that notice was given?

23 A Just above the -- where it says "served verbal notice," it
24 indicates that the license revocation date was 6/6 of
25 2015.

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1 THE COURT: Was what?

2 THE WITNESS: The revocation -- license
3 revocation date: 6/6 of 2015.

4 BY MR. GLAZA:

5 Q So, Deputy Rymarz, it's your belief that that date listed
6 above the line "served verbal notice of revoked CPL
7 license by peace officer" reflects actually the day that
8 he was give notice?

9 A That would be my understanding, yes.

10 Q Okay. And Deputy Rymarz, did you know that 6/6/2015 was
11 actually the date that the notice became effective -- or
12 that the revocation became effective?

13 A No.

14 Q And I would just point out that -- Well, I guess I can
15 show you.

16 MR. GLAZA: May I approach?

17 THE COURT: Yes. And what are we approaching --

18 MR. ZEMAN: Are you showing the (indiscernible)?

19 MR. GLAZA: Sure.

20 THE COURT: What are we approaching with?

21 MR. GLAZA: It's the same thing.

22 MR. ZEMAN: It's stipulated People's exhibit
23 two, your Honor.

24 MR. GLAZA: Yeah, exhibit two.

25 BY MR. GLAZA:

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1 Q And can you take a look at the last bullet point there,
2 Deputy Rymarz?

3 THE COURT: What page?

4 MR. GLAZA: The very first page.

5 THE COURT: First page, exhibit two.

6 THE WITNESS: Do you want me to read it?

7 BY MR. GLAZA:

8 Q I was going to ask you a question about it after you
9 looked at it.

10 A Okay.

11 Q Does that indicate there that the revocation became
12 effective 6/6/2015?

13 A That's what it indicates here, yes.

14 Q So that date of 6/6/2015, as supported by the clerk's
15 documentation, was the day it became effective. And,
16 furthermore, that bullet point also says that he was
17 convicted of OWI on 5/20/2015.

18 A Correct.

19 Q And do you -- When somebody is convicted of a crime that
20 would disqualify them from carrying a CPL, do you have any
21 understanding of what the process is of notification
22 between law enforcement, courts, and the clerk's office?

23 A I do not.

24 Q Okay. But you would agree that the clerk is certifying
25 that 6/6/2015 is the date the revocation became effective?

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1 A That's what it appears.

2 Q And there's nothing on People's exhibit one that indicates
3 when that notice was given and by whom. There's just a
4 date that's near it. Would you agree with that?

5 A That would indicate that the -- there is a date here of
6 6/6 of '15 that indicates that that's the date of the
7 license revocation, but it does not indicate who had done
8 the revocation.

9 Q And, you know, referencing the answer you gave earlier,
10 while you may not have done such an entry as this, you've
11 done other entries; and you testified that it would be
12 logical that when such an entry was made, the officer who
13 made the entry, the time and the reason for the entry,
14 would be recorded, right?

15 A It would make sense.

16 Q Okay. And that doesn't appear to be here. We have a date
17 but it doesn't say by whom or specifically that that is
18 the date that the notice was given.

19 A Not on this notice here, no.

20 Q And you would agree that 6/6/2015 is immediately preceded
21 by license revocation date?

22 A Correct.

23 Q And it does not say notice of revoked license date?

24 A Correct.

25 Q Okay. Deputy Rymarz, you indicated -- I guess I want to

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1 clarify. You indicated that you had contacted Cathy from
2 the clerk's office for information about Mr. Brown's
3 license?

4 A Yes.

5 Q What did she indicate to you regarding the notice?

6 A It was some time ago. She had faxed me some documentation
7 that indicated that he was served notice. And I brought
8 that information to the prosecutor's office when I
9 submitted a warrant request.

10 Q Do you recall which documentation that was?

11 A Oh, I know that it was a -- Offhand, I don't. But I do
12 have it in my file here.

13 Q I suppose you could take a look. I probably had it. I
14 just want to make sure we're on the same page.

15 THE COURT: Okay. We're going to pass this
16 matter briefly while he looks.

17 MR. GLAZA: Okay.

18 THE COURT: Call the next case.

19 You can remain with your stuff on the tables.

20 You can step down, Officer.

21 (At 10:29 a.m., witness excused)

22 THE COURT: Deputy. I called you "Officer."
23 I'm sorry.

24 (At 10:29 a.m., case passed)

25 (At 10:45 a.m., case recalled)

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1 THE CLERK: Recalling docket number 21, People
2 versus Brown, case number 18-266476-FH.

3 MR. ZEMAN: Jeff Zeman appearing on behalf of
4 the People.

5 MR. GLAZA: Again, Zack Glaza on behalf of Mr.
6 Brown.

7 THE COURT: Okay. The deputy has retaken the
8 stand. Both counsel are present. Defendant is present.
9 Please be seated.

10 Now, have all --

11 Deputy, have you had a chance to look at
12 whatever it is defense counsel was asking you to review?

13 THE WITNESS: Yes.

14 THE COURT: Okay. We're ready to proceed?

15 MR. GLAZA: I believe so. I'm going to --

16 THE COURT: Go ahead.

17 MR. GLAZA: -- ask some questions about that.

18 THE COURT: Go ahead.

19 BY MR. GLAZA:

20 Q Now, Deputy, you had an opportunity to review the record
21 to which you were referring; is that correct?

22 A Correct.

23 THE COURT: Shh. Keep your voices down.

24 BY MR. GLAZA:

25 Q And could you just describe what --

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1 THE COURT: Court's in session.

2 UNIDENTIFIED SPEAKER: Sorry, Judge.

3 BY MR. GLAZA:

4 Q Can you describe what that record is?

5 A It is a -- an e-mail and a form that was sent to Mr.
6 Brown.

7 Q Okay. And as it pertains to that e-mail, I've reviewed it
8 and --

9 THE COURT: I'm sorry. Hold on. If we're going
10 to talk about what it is he's got in his hands, it's got
11 to be an exhibit.

12 MR. GLAZA: That's what I ask.

13 MR. ZEMAN: Your Honor, I have no objection to
14 the e-mail entering; however, the contents that the deputy
15 has in his hand are actually included in People's exhibit
16 two, as part of the documents that were tendered to
17 counsel, --

18 MR. GLAZA: I think --

19 MR. ZEMAN: -- received from the clerk's office.

20 MR. GLAZA: Yeah, I think we can stipulate that
21 the e-mail in question has the same information as the
22 first page of exhibit two.

23 MR. ZEMAN: So could we just refer to People's
24 exhibit two, as opposed to --

25 THE COURT: Let's refer to -- Yeah.

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1 MR. ZEMAN: -- (indiscernible) --

2 THE COURT: Refer to exhibit two or it has to be
3 marked --

4 MR. GLAZA: Understood.

5 THE COURT: -- and moved to admit.

6 MR. GLAZA: Yeah, I'm fine with either. I --

7 THE COURT: And exhibit two --

8 MR. GLAZA: -- just want to make sure we're
9 clear.

10 THE COURT: Let me just say this: In the
11 future, when you come in with multiple-page exhibits, they
12 all need to be numbered in this courtroom.

13 MR. ZEMAN: Yes, your Honor.

14 THE COURT: Every single page. So then we're
15 talking on the -- everybody's talking about the same
16 thing.

17 MR. GLAZA: Sure thing, your Honor.

18 THE COURT: Exhibit two, page three, page ten,
19 page one, whatever it is. Okay?

20 MR. ZEMAN: Yes, your Honor.

21 THE COURT: All right. Go ahead.

22 So we're talking about exhibit two, page one?
23 Or do you want to mark the exhibit's pages?

24 MR. ZEMAN: I can mark the pages momentarily.

25 THE COURT: All right. You do that. I'm going

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1 to be in recess. I need two minutes. Court's in recess.
2 THE CLERK: All rise.
3 (At 10:47 a.m., recess)
4 (At 11:05 a.m., court in session)
5 THE CLERK: All rise.
6 THE COURT: Okay. Please be seated.
7 THE CLERK: Recalling docket number 21, People
8 versus Brown, case number 18-266476-FH.
9 MR. ZEMAN: Jeff Zeman appearing on behalf of
10 the People.
11 MR. GLAZA: Zack Glaza on behalf of Mr. Brown.
12 MR. ZEMAN: Your Honor, I have numbered the
13 pages. There are 22 in total. Counsel and I --
14 THE COURT: Okay. Resume the witness stand.
15 Let's proceed.
16 MR. ZEMAN: Thank you, your Honor.
17 MR. GLAZA: All right, your Honor --
18 THE COURT: The parties and counsel are present.
19 Witness has resumed the witness stand.
20 Please restate your name, Deputy.
21 THE WITNESS: Eric Rymarz, Oakland County
22 Sheriff's Office.
23 THE COURT: Go ahead.
24 MR. GLAZA: Thank you, your Honor.
25 So I want to return to the inquiry regarding

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1 exhibit number two, page one.

2 And may I approach the witness so that I can
3 show him this exhibit? It's got a lot of dates on it, and
4 I just want to make sure he's clear on what I'm referring
5 to.

6 MR. ZEMAN: No objection, your Honor.

7 MR. GLAZA: May I approach, your Honor?

8 THE COURT: Yes.

9 BY MR. GLAZA:

10 Q Deputy Rymarz, I'm just referring to page one there. So
11 that first cover page. And we've all agreed that the
12 information listed there is the same information that was
13 sent to you by e-mail from Cathy Craig at the clerk's
14 office. So as it relates in the information that's listed
15 there, would you agree that bullet point one mentions that
16 there was a suspension letter sent on September 12, 2013
17 to Mr. Brown?

18 A Yes.

19 Q And would you agree that that's due to an OWI/High BAC
20 charge that is pending?

21 A Correct.

22 Q Okay. And would you agree that at the fourth bullet point
23 it says that they mailed a suspension letter to follow up
24 to Mr. Brown that the Gun Board confirmed his suspension?

25 A Yes.

1 Q And that date that is listed at that fourth bullet point
2 is November 19, 2013?

3 A Correct.

4 Q Okay. Deputy Rymarz, is there anywhere else amongst those
5 bullet points that describes where notice, whether it's a
6 phone call or a letter or anything, was sent to Mr. Brown
7 pertaining to a CPL besides the two instances that I just
8 mentioned?

9 MR. ZEMAN: I just want to object to line of
10 questioning. I let it go for a little bit because I
11 thought this might be setup for further questions about
12 information within the deputy's personal knowledge. Your
13 Honor, I'm objecting. I think that the questions are
14 outside the scope of his personal knowledge and it's
15 argumentative. I think that counsel --

16 THE COURT: Overruled.

17 MR. ZEMAN: -- can argue these points --

18 THE COURT: Overruled. This is the crux of the
19 issue. He can ask.

20 MR. ZEMAN: Okay, that's fine.

21 THE COURT: If he doesn't know, he doesn't know.

22 BY MR. GLAZA:

23 Q So I'm just asking: Besides the two instances that we --
24 I just highlighted to you, are there any other mentions of
25 when Brown received a notice of either a suspension

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1 because of the charges pending or revocation of a CPL?

2 A Received? No. But --

3 Q Sent?

4 A Yes. One, two, three -- Number four, after the hearing on

5 November 19, 2013 we mailed Mr. Brown a follow-up

6 suspension letter signed by the members of the Gun Board

7 confirming his suspension.

8 Q I mentioned one of those. So that's the other notice that

9 you see there?

10 A Correct.

11 Q Okay.

12 A Yes.

13 MR. GLAZA: And I don't believe I have any more

14 questions about this document. Okay? So I'll just see

15 . . . I do not have any further questions for Deputy

16 Rymarz.

17 THE COURT: Any redirect?

18 MR. ZEMAN: No. No redirect, your Honor.

19 THE COURT: All right.

20 Deputy, you may step down.

21 (At 11:05 a.m., witness excused)

22 THE COURT: We're going to pass this matter for

23 a couple of minutes. Let's call the other case.

24 (At 11:05 a.m., case passed)

25 (At 11:13 a.m., case recalled)

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1 THE CLERK: Recalling docket number 21, People
2 versus Brown, case number 18-266476-FH.

3 THE COURT: The parties and counsel are present.
4 The deputy had stepped off the stand.

5 Call your next witness.

6 MR. ZEMAN: The People would call Deputy
7 Elinski. And the officer in charge --

8 THE COURT: Okay. Right this way.

9 MR. ZEMAN: He was in the hall when we
10 (indiscernible), your Honor. He may have run to the
11 bathroom (indiscernible).

12 THE COURT: Passed. Call the next case.

13 (At 11:14 a.m., case passed)

14 (At 11:18 a.m., case recalled)

15 THE CLERK: Recalling docket number 21, People
16 versus Brown, case number 18-266476-FH.

17 MR. ZEMAN: Jeff Zeman appearing on behalf of
18 the People.

19 MR. GLAZA: Zack Glaza on behalf of Mr. Brown.

20 THE COURT: Who's the next witness? Deputy who?

21 MR. ZEMAN: Oh, Deputy Elinski.

22 THE COURT: All right. We need you right up
23 front, Deputy. Come right here. Watch your step upon
24 entry into the box. The door opens towards you. Raise
25 your right hand and take an oath.

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1 Do you swear to tell the truth, the whole truth,
2 so help you God?

3 MR. ELINSKI: Yes, I do.

4 THE COURT: All right. Please state your full
5 name for the record.

6 THE WITNESS: Robert Elinski, E-l-i-n-s-k-i.

7 THE COURT: E-l-i-n-s-k-i.

8 Okay. Go ahead.

9 MR. ZEMAN: Thank you, your Honor.

10 ROBERT ELINSKI

11 called by the People at 11:18 a.m., sworn by the Court,
12 testified:

13 DIRECT EXAMINATION

14 BY MR. ZEMAN:

15 Q Deputy Elinski, how are you currently employed?

16 A Oakland County Sheriff's Department.

17 Q Were you working as a deputy for the Oakland County
18 Sheriff's --

19 THE COURT: I'm sorry. How long have you been
20 there?

21 THE WITNESS: Since July of 2011.

22 THE COURT: 2011? Okay. You're new.

23 Go ahead.

24 BY MR. ZEMAN:

25 Q Deputy Elinski, were you working for the Oakland County

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1 Sheriff's Office on November the 24th in 2017?

2 A Yes.

3 Q And what were your duties on that date?

4 A I was assigned to Independence Township, road patrol.

5 Q At approximately -- sometime between 5:30 and 6:00 p.m. on
6 that date, did you assist in the investigation of a crash
7 on Dixie Highway near Deer Lake Road in Independence?

8 A Yes.

9 Q Okay. And had a suspect been identified with regard to
10 the cause of that crash?

11 A Yes.

12 MR. GLAZA: I'll stipulate to the
13 identification.

14 MR. ZEMAN: Okay. It's my understanding they
15 stipulate --

16 THE COURT: So ordered.

17 MR. ZEMAN: Okay. Thank you.

18 THE COURT: Stipulation to ID of the defendant.

19 MR. ZEMAN: Okay.

20 BY MR. ZEMAN:

21 Q So let's get right to why we're here today, then, Deputy
22 Elinski. During the course of your assistance in that
23 investigation, did you check to see whether the defendant
24 had a valid concealed pistol license?

25 A I did a LEIN check along with a driving check on my in-car

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1 computer, yes.

2 Q Did you do that on behalf of the other deputies who were
3 at the scene?

4 A By their request, yes.

5 Q Okay. And were you able to determine whether or not the
6 defendant had a valid CPL license on that date and time?

7 A At that date and time, no, he did not.

8 Q But you were able to determine he did not; is that
9 correct?

10 A It displayed on my in-car computer, I made a verbal
11 inquiry to our LEIN dispatch which verified the same as
12 what was displayed on my in-car computer as being revoked
13 and denied.

14 Q Okay. Did it indicate -- What showed on your in-car
15 computer, did that show that the defendant had previously
16 served verbal notice of his suspension? If you recall.

17 A I -- I do not remember that part.

18 Q Okay. Did you yourself serve the defendant verbal notice
19 that he had a suspended or revoked concealed pistol
20 license on that date?

21 A I didn't have any verbal communication with him, no.

22 Q You never had any verbal communications with the
23 defendant?

24 A No.

25 Q Is that correct?

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1 A Via the other deputies, that inquiry was made to them --
2 to the defendant.

3 Q What inquiry was made to the defendant?

4 A About the CPL being denied and expired.

5 Q Did you tell the other deputies to notify the defendant
6 that his CPL had been revoked?

7 THE COURT: I'm sorry. I don't want to talk
8 about what the other deputies -- We're getting into
9 hearsay. Can we identify who that is?

10 BY MR. ZEMAN:

11 Q What other deputies were present at that time?

12 A Deputy Harris and Deputy Johnson.

13 Q Okay. During the course of your LEIN inquiry, did you
14 enter into LEIN the defendant had been notified on that
15 date that his CPL had been revoked?

16 A Could you say the question again, please?

17 Q Did you make it -- Did you yourself make a notification in
18 the LEIN system the defendant had been denied at the time
19 of his arrest on November 24th that his CPL was revoked?

20 A I don't know what that means.

21 Q Did you enter any information into LEIN --

22 A I -- I did not, no.

23 Q -- in regard to the CPL? No? Okay.

24 A No. I don't make that entry.

25 Q Okay. Have you ever done that before?

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1 A No.

2 MR. ZEMAN: Okay. I have no further questions
3 at this time, your Honor.

4 CROSS-EXAMINATION

5 BY MR. GLAZA:

6 Q Is it Deputy?

7 A Yes.

8 Q Deputy Elinski, thanks for your time. Just a couple
9 questions. You've already stated that you've never made
10 an entry into LEIN that notice was given that -- to a
11 person that their CPL was revoked.

12 A Correct.

13 Q You've never made such an entry?

14 A No.

15 Q Are you -- Were you aware that there is a state law that
16 requires peace officers to make such an entry when they
17 give such notice?

18 A That -- I don't -- I don't know.

19 Q You weren't aware of it?

20 A What --

21 Q I can rephrase it.

22 A Yeah, I mean, --

23 Q Are you aware that there's a state law that says if a
24 peace officer encounters an individual who has a revoked
25 CPL but that individual had never received notice of the

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1 revoked CPL, that the peace officer should make an entry
2 into LEIN reflecting that they have given them notice?

3 A At face value, if you tell me that's a law, I believe you;
4 but I never --

5 Q No, I'm just saying, Were you aware of it or not?

6 A No.

7 Q So -- Okay. That's fine. That's fine.

8 And you've never made such an entry -- Have you
9 ever --

10 A I have not.

11 Q -- made entries into the LEIN system regarding your
12 interactions with people, with citizens?

13 A Well, I made a request through our dispatch to make
14 entries in the LEIN.

15 Q Okay. Sure. So whether -- So what I'm referring to have
16 you made an entry, if you asked somebody else to do it,
17 that's --

18 A Okay.

19 Q -- the same thing, as far as I'm concerned.

20 So when you do make such an entry, what type of
21 information do you report to ask to be entered?

22 A It's circumstantial, depending on what case you're
23 involved in.

24 Q Of course. But in general, what type of information would
25 be there?

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1 A Example?

2 Q Yeah.

3 A To this case specifically or that anything --

4 Q To anything. If you're ever making an entry into the LEIN
5 system or asking somebody else to do that for you, I just
6 want to know what type of information are you asking to be
7 entered?

8 A Verification on cer- -- status, property, people, recovery
9 of evidence.

10 Q Okay. So if I want -- I just want to clarify real quick
11 and then I'll move on. When I'm talking about making an
12 entry, I'm not talking about verifying what's there. I'm
13 talking about you either putting something into the LEIN
14 system for a person or asking somebody else to do it, you
15 enter new information. Have you ever done that?

16 A Sure. Of course.

17 Q Okay. When you do that, what type of information do you
18 ask to be entered?

19 A A whole lot of stuff.

20 Q Okay. And what does the -- And so when you enter
21 something, if there's a new entry, what is reflected in
22 the LEIN system?

23 A I mean, talking about hypotheticals, I mean, I don't know.
24 I mean, people, date, time.

25 Q Okay. So the people that are involved, --

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1 A Right.

2 Q -- that would be the officer and the suspect or the
3 individual, the citizen? Is that correct?

4 A Could be. I mean, you're asking me questions I can't give
5 you an answer to.

6 Q Well, I understand it's hypothetical because you said that
7 you haven't done the thing that's at issue in this case --

8 THE COURT: Okay. Hold on.

9 Deputy, if you don't know, I want you to say you
10 don't know.

11 THE WITNESS: Okay.

12 THE COURT: I don't want you to guess or
13 speculate.

14 Go ahead.

15 MR. GLAZA: Very well.

16 BY MR. GLAZA:

17 Q So if you don't know, just say I don't know.

18 So when you make such entries, what type of
19 information would be entered? It doesn't have to case-
20 specific. But all people, no matter what the case is,
21 would have some entry -- some information that was
22 consistent, like who the person was, who the officer was,
23 when the entry was made. Would you agree to that?

24 A I'll agree.

25 Q Okay. And if you're entering something in the LEIN, then

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1 --

2 THE COURT: Okay. But see, the way you're
3 phrasing the question is confusing. The deputy has
4 already said he's never entered anything into LEIN.

5 MR. GLAZA: He's asked others to, though.

6 THE COURT: Yes. But all you can do is ask him
7 what he's asked people to do. He can't say what other
8 people have done.

9 MR. GLAZA: Okay, no, I --

10 THE COURT: He can say what he's observed in the
11 LEIN, what he sees when he looks at them; but he can't
12 testify as to what other people have done, even if he's
13 asked them to do something specific, which he's not
14 testified to thus far.

15 MR. GLAZA: Understood, your Honor.

16 THE COURT: Okay.

17 MR. GLAZA: And that is what I'm asking.

18 BY MR. GLAZA:

19 Q When you have requested others to make an entry, have you
20 requested that those people record the name of the person
21 you encountered, your name, the time that this request was
22 made?

23 A Yes, I'm assuming that's protocol.

24 Q Okay. And I'm assuming the same thing.

25 So, going back to what you said earlier, you

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1 said when you were asked to check the CPL status of Mr.
2 Brown, you checked in the LEIN system; is that correct?

3 A Correct.

4 Q And the LEIN system, you testified, said that he had a
5 revoked license or you said it was not valid?

6 A Both. Correct.

7 Q Okay. Do you remember specifically what the information
8 said?

9 A Specifically? No.

10 Q Okay. It just said not valid?

11 A Correct.

12 Q Okay. And you testified earlier that you didn't see
13 anything in that entry regarding notice or anything like
14 that?

15 A That I don't remember.

16 MR. GLAZA: All right. I have nothing further.

17 THE COURT: You may cross-examine.

18 MR. ZEMAN: No redirect, your Honor.

19 THE COURT: I mean redirect. No redirect?

20 MR. ZEMAN: No redirect.

21 THE COURT: Nothing further for this witness?

22 Okay. May the witness be excused?

23 MR. ZEMAN: Yes, your Honor.

24 THE COURT: Deputy, you may step down. You're
25 excused.

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1 Is that a yes?

2 MR. ZEMAN: Yes.

3 THE COURT: Okay.

4 (At 11:28 a.m., witness excused)

5 THE COURT: You may call your next witness.

6 MR. ZEMAN: The People have no further
7 witnesses, your Honor.

8 MR. GLAZA: No further witnesses.

9 THE COURT: No witnesses for the defense?

10 MR. GLAZA: No.

11 THE COURT: Okay. Are we ready to argue?

12 MR. ZEMAN: The People are ready to argue. I
13 will indicate that the exhibits have yet to be marked.
14 (Indiscernible) --

15 THE COURT: Is there a --

16 MR. ZEMAN: -- for them.

17 THE COURT: Is there a -- Do you have a trial
18 date?

19 MR. ZEMAN: We have a trial date for next week,
20 your Honor.

21 THE COURT: Okay. So how fast can you get your
22 briefs done?

23 MR. ZEMAN: Well, your Honor, here's the thing:
24 Our trial date is next Tuesday. The parties both
25 anticipate that whichever way the Court comes out on this

Motion Hearing Transcript

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1 --

2 THE COURT: Tuesday the what?

3 MR. ZEMAN: The 29th.

4 THE COURT: Okay.

5 MR. ZEMAN: The parties anticipate that
6 whichever way the Court comes out on this, the losing
7 party will be seeking an appeal with regard to this issue.

8 THE COURT: Yes.

9 MR. ZEMAN: And given that there is no
10 published case on this, my office may be interested in --

11 THE COURT: Right. And that's what it sounds
12 like, a --

13 MR. ZEMAN: Sure.

14 THE COURT: -- case of first impression,
15 actually. So what I need are briefs.

16 MR. ZEMAN: Right.

17 THE COURT: So how fast can you get them done?

18 MR. GLAZA: As fast as the Court requires.

19 MR. ZEMAN: I mean, if --

20 THE COURT: You tell me.

21 MR. ZEMAN: Well, and the other thing --

22 Sorry. I will make -- I don't know, your Honor.
23 We'll argue right now. I'll have a better answer after we
24 put our verbal arguments, in case there's anything new
25 from defense counsel. I should be able to get it done

Motion Hearing Transcript

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1 fairly quickly. In light of the anticipated need for an
2 appeal, I will also (indiscernible) to the Court that in
3 light of the fact that that is also the only felony count
4 on this case, Count 1, the CCW, it may be dispositive of
5 whether or not this Court will hear this case. If --

6 THE COURT: Right.

7 MR. ZEMAN: -- If it's dismissed, you know, I'll
8 be either moving for -- asking for an appeal or moving for
9 a remand.

10 THE COURT: Or both. Yeah.

11 MR. ZEMAN: Right.

12 THE COURT: Okay.

13 MR. ZEMAN: So, --

14 THE COURT: All right. Well, quite frankly, I
15 don't know if we have something else --

16 (To the clerk) Where is the defendant? Is he in
17 lockup?

18 THE CLERK: Uh-hum.

19 THE COURT: I thought so. Okay. Why don't you
20 send for Mr. George and send for the defendant and get
21 them up here now.

22 I don't think I have enough time to listen to
23 arguments. I want you to have an opportunity to fully
24 argue. And I do need your briefs. And so I need you to
25 do your findings of fact and conclusions of law based on

Motion Hearing Transcript

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1 the evidentiary hearing today; and get those to me, let's
2 say -- Could you get those to me by Monday, the 30th? What
3 is that date?

4 MR. GLAZA: Monday is the 28th.

5 THE COURT: Is it the 28th? Oh, okay. Monday,
6 the 28th. Okay. Can you get those to me?

7 MR. ZEMAN: And your Honor, are we keeping the
8 trial date?

9 THE COURT: Yeah, we'll keep the trial date;
10 you're going to get those to me by Monday at noon.

11 MR. GLAZA: Yes, your Honor.

12 THE COURT: Okay?

13 MR. GLAZA: Yep.

14 MR. ZEMAN: Okay.

15 THE COURT: And then I'll take a look at them.

16 MR. ZEMAN: Yes, your Honor. And the exhibits?

17 THE COURT: You've already marked them. I told
18 you to consider them marked. You made copies --

19 MR. ZEMAN: Oh, I meant would the Court --

20 THE COURT: Yeah, make copies and leave them
21 with my clerk by the time you get your brief done, --

22 MR. ZEMAN: Yes, your Honor.

23 THE COURT: -- findings of fact, conclusions of
24 law.

25 MR. ZEMAN: Yes, your Honor.

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1 THE COURT: Okay?

2 MR. GLAZA: Thank you, your Honor.

3 THE COURT: All right. Anything further for the
4 record?

5 MR. ZEMAN: Nothing else.

6 MR. GLAZA: No.

7 THE COURT: Okay. Put your witnesses on standby
8 for that Tuesday.

9 MR. ZEMAN: Yes, your Honor.

10 THE COURT: And I'll find out something, once I
11 see your briefs.

12 MR. ZEMAN: Your Honor, this will be addressed
13 prior to the trial, but on Tuesday; we'll submit on Monday
14 and address the --

15 THE COURT: Yeah, we'll put the witnesses on
16 standby. I just need you to come. And maybe I can work
17 it out and rule by the time I see you on Tuesday. And
18 then we won't proceed with the actual jury selection until
19 I've ruled. Okay? But I'm looking forward -- I think I
20 might be able to rule before then.

21 MR. GLAZA: Thank you.

22 MR. ZEMAN: Thank you.

23 THE COURT: I'm planning on it. All right?

24 (At 11:32 a.m., proceedings concluded)

25 * * * * *

Motion Hearing Transcript

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STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable DENISE LANGFORD MORRIS, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: May 15, 2019

 /S/ Susan G. Johnson

Susan G. Johnson, CER 3511

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OC Fax Server 12/4/2017 10:08:42 PM PAGE 1/001 Fax Server

11/24/17 | 18:02:37.72 | LGWCCW | NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.
03984
A LGWCCW 3984 188259 11/24/17 1802 CLEMISCOMP3.
MI6316300

REVOKED LICENSE TO CARRY A CONCEALED PISTOL (CPL)

THIS INDIVIDUAL IS NOT ELIGIBLE TO CARRY A CONCEALED PISTOL.

LICENSE REVOCATION DATE:06/06/2015

***SERVED VERBAL NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER.

***THIS REPOSENSE SHALL NOT BE DISCLOSED TO ANY PERSON EXCEPT FOR PURPOSES
OUTLINED IN PUBLIC ACT 202 OF 2014 (MCL 28.421B).***

CPL:683528G LIC DATE:08/06/2013 EXP DATE:
NAM:BROWN/CLEOPHAS/ANDREW/ DOB:
RACE:B SEX:M HGT:600 WGT:200 HAI:BLK EYE:BRO
OLN: SOC:
ADD:
CCU:63 - OAKLAND

LEOSA DATABASE RESPONSE:
NO LEOSA DATA FOUND

END OF CCW MESSAGE





Lisa Brown

OAKLAND COUNTY CLERK/REGISTER OF DEEDS

www.oakgov.com/clerkrod

Vital Records

January 8, 2019

I hereby certify that a search of our records at the Oakland County Gun Board shows the following Concealed Pistol License record for **Cleophus Andrew Brown, DOB** [REDACTED]

CPL #683528G; Effective Dates: 08/06/2013 Original Expiration - 11/27/2017

- On 9/12/2013 Suspension letter sent to Mr. Brown due to Operating While Intoxicated with High BAC charge pending. Gun Board Hearing was set up for November 19, 2013.
- On 10/29/2014, Mr. Brown called in to request his CPL to be reinstated as his original case #134951SD was dismissed without prejudice. We requested a Register of Action for the case at 51st District Court, which they faxed over to our office on 11/5/13, also stating that Mr. Brown was re-charged for OWI with High BAC, new case #144309SD.
- Gun Board denied his reinstatement. Mr. Brown waived his Gun Board Hearing scheduled for 11/19/2013 (he is not required to attend hearing).
- After the hearing on 11/19/2013, we mailed Mr. Brown a follow up Suspension letter signed by the members of the Gun Board confirming his suspension.
- He was convicted of OWI on 5/20/2015, his CPL was revoked on 6/6/2015. A first OWI conviction is a 3-year disqualification for a CPL.

Attached is documentation, including his application. If you have any other questions, please contact me at 248-858-0521.

Kathy Craig
Office of the Oakland County Clerk
Keeper of the Records



Administrative Offices
1200 N Telegraph Rd-Dept 413
Pontiac Mi 48341-0413
(248) 858-0560
clerk@oakgov.com

County Clerk's Office
1200 N Telegraph Rd-Dept 413
Pontiac Mi 48341-0413
(248) 858-0581
clerklegal@oakgov.com

Election Division
1200 N Telegraph Rd-Dept 413
Pontiac Mi 48341-0413
(248) 858-0564
elections@oakgov.com

Register of Deeds Office
1200 N Telegraph Rd-Dept 480
Pontiac Mi 48341-0480
(248) 858-0605
deeds@oakgov.com



RI-012 (10/2010)
MICHIGAN STATE POLICE


Print Form

CONCEALED PISTOL LICENSE APPLICATION

I. General Information: Type or clearly print answers to all fields.					
1. Full Legal Name (First, Middle, Last, Suffix) Cleophas Andrew Brown				2. Date of Birth [REDACTED]	
3. Previous Names or Alias (If applicable)			4. Daytime Telephone Number [REDACTED]		
5. Social Security Number (Voluntary) [REDACTED]			6. Driver License Number or State Identification Number [REDACTED]		
7. a. Residential Address [REDACTED]			b. Residential City [REDACTED]		c. Residential Zip [REDACTED]
8. a. Mailing Address (If different)			b. Mailing City		c. Mailing Zip
9. a. Race African American	b. Gender Male	c. Height 6'	d. Weight 200	e. Hair Color Black	f. Eye Color Brown
10. Name of Police Department in the City, Village, or Township of Residence (If applicable) [REDACTED]			11. County of Residence Oakland		
12. Are you a U.S. citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		13. a. Are you a Legal Immigrant Alien? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		b. Indicate A or I-94 Number [REDACTED]	
c. Place of Birth Eutaw, AL					
II. Type of License: Check the box next to the type of license that applies to this application.					
<input checked="" type="checkbox"/> New - Applying for a new license.					
<input type="checkbox"/> Temporary - If applying for a temporary license, attach a statement of facts supporting a temporary license.					
<input type="checkbox"/> Renewal - If renewing an existing license, complete the renewal information and certification below.					
1. Renewal Information					
a. Expiration Date		b. Issue Date		c. County of Issuance	
d. Concealed Pistol License Number					
2. Renewal Certification					
I certify that I have completed at least 3 hours of review of the required training and have had at least 1 hour of firing range time in the last 6 months preceding this application.					
Signature [REDACTED]					Date [REDACTED]
III. Survey: Answer "yes" or "no" to the following questions.					
1. Have you ever been convicted of a felony in this state or elsewhere?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2. Do you have a felony charge pending in this state or elsewhere?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Have you been convicted of any misdemeanor listed on the Concealed Pistol License Guide in the 8 years preceding this application? If yes, please explain on the reverse side of this application.				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Have you ever been convicted of a misdemeanor crime of domestic violence?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5. Do you have a personal protection order against you or been released by a judge or a district court magistrate subject to protective conditions?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
6. Have you ever been found guilty but mentally ill of any crime or offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
7. Have you ever been subject to an order of involuntary commitment in an inpatient or outpatient setting due to a mental illness?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
8. Do you have a diagnosed mental illness, regardless of whether you are receiving treatment for that illness?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. Are you under a court order of legal incapacity in this state or elsewhere?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10. Have you ever been dishonorably discharged from the United States Armed Forces?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Have you completed the training required for a new Concealed Pistol License (original documentation must be submitted with the application), OR have you certified above that you have completed the required review and firing range time for a renewal of your license?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
12. Are you a retired police officer or retired law enforcement officer?				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
13. Are you exempt from pistol-free zones pursuant to MCL 28.425o? If yes, proof may be required to be presented to the concealed weapon licensing board. (See back for qualifying list.)				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
IV. References: Provide the names, addresses, and telephone numbers of two references.					
1. Reference One					
a. Name Edna Brown			b. Telephone Number [REDACTED]		
c. Residential Address [REDACTED]			d. City [REDACTED]		e. Zip [REDACTED]
2. Reference Two					
a. Name David Brown			b. Telephone Number [REDACTED]		
c. Residential Address [REDACTED]			d. City [REDACTED]		e. Zip [REDACTED]
V. Agreement and Certification: Read the following statements. By signing below, you acknowledge they are true.					
<ul style="list-style-type: none"> I have read the information provided on carrying a concealed pistol and obtaining a Michigan Concealed Pistol License and I meet all of the criteria for a Concealed Pistol License under Public Act 372 of 1927, as amended. I give authority to the concealed weapon licensing board to access any record, including medical and mental health records, pertaining to my qualifications to receive a Concealed Pistol License. I understand I may request that the licensing board review my medical and mental health records in a closed session, and that I and my representative may be present at that closed session. I understand this application is executed under oath and swear or affirm under penalty of law that the above answers are true and correct to the best of my knowledge. I understand that intentionally making a false statement on this application is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,500, or both. I have been provided with a copy of the compilation of the Firearms Laws of Michigan created by the Legislative Service Bureau. 					
Applicant's Signature (Do not sign until instructed by the county clerk or his or her representative) Cleophas Brown				Date JUN 21 2013	
Witness (County clerk or representative) [REDACTED]				Date JUN 21 2013	

Return the completed unsigned form, a passport-quality photograph, and documentation of required training to the county clerk's office

Prosecution's Findings of Fact and Conclusions of Law

OAKLAND COUNTY 18-266476-FH

 JUDGE D. LANGFORD MORRIS
 PEOPLE v BROWN, CLEOPHA

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Case No. 2018-266476-FH


HON. DENISE LANGFORD-MORRIS

CLEOPHAS ANDREW BROWN,

Defendant.

JESSICA R. COOPER (P23242)
 OAKLAND COUNTY PROSECUTING ATTORNEY
 1200 NORTH TELEGRAPH ROAD
 PONTIAC, MICHIGAN 48341

ZACHARY GLAZA (P80036)
 ATTORNEY FOR THE DEFENDANT
 920 HOFFMAN AVE
 ROYAL OAK, MI 48067

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 2019 JAN 25 PM 3:30
 BY: 
 DEPUTY COUNTY CLERK

PEOPLE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW **WITH REGARD TO THE COURT'S JANUARY 23, 2019 EVIDENTIARY HEARING** **ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AND DISMISS CHARGES**

NOW COMES Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Jeffrey D. Zeman, Assistant Prosecuting Attorney, and establishes the following findings of fact and conclusions of law, in light of the January 23, 2019 evidentiary hearing held in this court:

Prosecution's Findings of Fact and Conclusions of Law

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INTRODUCTION

The Defendant is charged in this case with one felony count of Carrying a Concealed Weapon, pursuant to MCL 750.227. He has also been charged with the misdemeanor offenses of Operating While Intoxicated, 2nd Offense (MCL 257.625) and Possession of a Firearm Under the Influence (MCL 750.237), neither of which is the subject of Defendant's instant motion. The Defendant's motion to dismiss the felony count pursuant to MCL 28.428 fails because the evidence admitted at the evidentiary hearing with regard to this issue proves that Defendant did receive notice that his concealed pistol license was revoked prior to his arrest in this case.

FINDINGS OF FACT

At the evidentiary hearing held in this Court on January 23, 2019 Deputy Rymarz of the Oakland County Sheriff's Office testified that during the course of his investigation on November 24, 2017 he inquired as to the Defendant's concealed pistol license ("CPL") status by calling dispatch to request a LEIN inquiry and he learned that the Defendant's CPL had been revoked. He testified that he later obtained People's Exhibit #1, which is a copy of the record indicating that the Defendant's CPL had been revoked on June 6, 2015, and that the Defendant had been served verbal notice of the revocation by a peace officer. Deputy Rymarz testified that he had not himself entered the notice that the Defendant had been verbally notified of his CPL revocation, and that the date and time of "11/24/17 | 18:02:37.72" at the top of People's Exhibit #1 reflects the date and time of the inquiry, not the date and time that notice was served upon the Defendant.

Deputy Elinski of the Oakland County Sheriff's Office testified that, at the request of the Deputies who were already on scene, he inquired as to the Defendant's CPL status by calling dispatch to request a LEIN inquiry and learned that the Defendant's CPL had been revoked. Deputy Elinski testified that he could not recall whether he learned from his inquiry if the

Prosecution's Findings of Fact and Conclusions of Law

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Defendant had been previously notified that his CPL was revoked. He also testified that he himself had not spoken to the Defendant during the course of the investigation; had not himself notified the Defendant that his CPL was revoked; and had not himself entered anything into LEIN to indicate that he had served verbal notice to Defendant of his CPL revocation.

People's Exhibits #1 and #2 were admitted by stipulation of the parties. People's Exhibit #1, as indicated above, is a copy of the record indicating that the Defendant's CPL had been revoked on June 6, 2015, and that the Defendant had been served verbal notice of the revocation by a peace officer.

People's Exhibit #2 is a certified copy of the records created, obtained and maintained by the Oakland County Clerk, with reference to the Defendant's Concealed Pistol License. The first page of People's Exhibit #2 provides the court a timeline of the suspension and ultimate revocation of the Defendant's CPL, although the parties stipulate that the date of "11/5/13" in the second bullet point on that page should be corrected to state "11/5/14." According to People's Exhibit #2, the Defendant's CPL was originally suspended due to a pending Operating While Intoxicated charge, which was dismissed by the 51st District Court without prejudice on October 29, 2014 (see pg. 20 of People's Exhibit #2). The same day that the Operating While Intoxicated charge was dismissed, the Defendant called the Oakland County Clerk's Office to request that his CPL be reinstated. When the Clerk's Office requested a Register of Action from the 51st District Court, the Clerk's Office was informed by the clerk at the 51st District Court that, as of November 5, 2014, the Defendant had already been re-charged for the same offense (see pg. 13 of People's Exhibit #2). The Defendant was ultimately convicted of Operating While Intoxicated on May 20, 2015, and his CPL was revoked on June 6, 2015.

CONCLUSIONS OF LAW

The Defendant is criminally liable for Carrying a Concealed Weapon. Pursuant to MCL 28.428, an individual is not criminally liable for violating a suspension or revocation of his concealed pistol license, "unless he or she has received notice of the order." MCL 28.428(8). The Defendant argues that notice of his CPL revocation prior to the arrest on the instant charges was deficient, given the requirements of MCL 28.428 subsections (2) and (3); and that, therefore, he is immune from prosecution. However, the Michigan Court of Appeals has confronted this very issue, and it concluded that verbal notice is sufficient to satisfy the condition described in subsection (8):

The trial court did not err in denying defendant's pretrial motion to dismiss, given that, even if MCL 28.428 applied to a CCW charge brought under MCL 750.227, it is evident to us from the record that the licensing board was invoking subsection (3) of MCL 28.428 in support of the suspension and subsection (4) for the revocation. Therefore, personal service of the suspension notice or service of the notice by certified mail was not necessary. Moreover, assuming that subsection (2) was applicable and consistent with subsections (7) — (9) of MCL 28.428, even if personal service or certified mail was not utilized under subsection (2), **verbal notice given by a law enforcement agency or police officer can suffice as "notice" where a defendant is later stopped and is still carrying a concealed weapon despite the previous notice, thereby allowing an arrest and criminal liability.** There was evidence of verbal notice prior to the date on which defendant was arrested for the crimes at issue here. Accordingly, dismissal of the CCW charge would not have been proper.

People v. Fort, No. 298378, 2011 Mich. App. LEXIS 1641, at *10-14 (Ct. App. Sep. 22, 2011)(*Emphasis added*; unpublished opinion previously attached to People's Response to Defendant's Motion).

At the time of the *Fort* decision, MCL 28.428 contained language different from the present statute cited by the Defendant (*see* 2014 Michigan Code Archive, attached); that statutory language was in effect at the time of the Defendant's suspension in 2013 and at the time the OWI charges against the Defendant were reinstated at the end of 2014. However it is unnecessary for this Court to determine whether the former or current MCL 28.48 is applicable

Prosecution's Findings of Fact and Conclusions of Law

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in this case, as the differences between the two versions do not change the issue before the court, in light of the *Fort* decision. First, the language of subsection (8) remains the same between the former and current versions of the statute. Second, the 2014 version of the statute also required that written notice be sent to the Defendant (albeit by the former Concealed Weapons Licensing Board, as opposed to the County Clerk); that the requirements of the contents of that written notice differ between the 2014 statute and the current statute is irrelevant to the issue at hand, as there is no evidence in the record that the Defendant was sent any written notice with regard to the suspension or revocation of his CPL subsequent to the initial dismissal of the OWI charge against him on October 29, 2014.

However, in this case, as in *Fort*, there is evidence that the Defendant had at some time been served *verbal* notice by a police officer that his concealed pistol license had been revoked, prior to his arrest in the instant case. People's Exhibits #1 and #2 demonstrate that the Defendant's CPL had in fact been revoked more than two years prior to his arrest in this case. Deputy Elinski testified that he inquired as to the Defendant's CPL status at the request of the deputies who were already on scene of the investigation in this case when he arrived to assist; and that, although he could not recall whether he learned from his inquiry whether the Defendant had been previously notified that his CPL had been revoked, that he himself never spoke to the Defendant during the course of the investigation, nor did he himself enter any notice into LIEN that he had notified the Defendant of his CPL revocation that night. Deputy Rymarz testified that he inquired as to the Defendant's CPL status, and later obtained a copy of People Exhibit #1; and furthermore testified that People's Exhibit #1 indicates that the Defendant had already been served verbal notice by a peace officer that his CPL had been revoked. Consequently, any immunity from prosecution afforded individuals by MCL 28.428(8) does not bestow immunity upon this Defendant, as he had already received notice of the June 6, 2015 order revoking his concealed pistol license.

Prosecution's Findings of Fact and Conclusions of Law

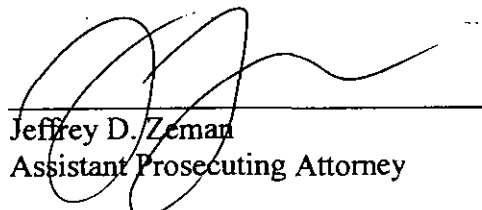
CONCLUSION

WHEREFORE, the People respectfully request that this Honorable Court deny the Defendant's motion to suppress evidence and dismiss.

Respectfully submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY

By:


Jeffrey D. Zeman
Assistant Prosecuting Attorney

DATED: January 25, 2019

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2014 MCLS § 28.428

2014 Michigan Code Archive

**MICHIGAN COMPILED LAWS SERVICE > Chapter 28 Michigan State Police > Act 372 of 1927
Firearms****§ 28.428. Revocation of licenses; grounds; hearing; suspension; order;
notice.**

Sec. 8.

- (1) The concealed weapon licensing board that issued a license to an individual to carry a concealed pistol may revoke that license if the board determines that the individual committed any violation of this act other than a violation of section 5f(4). If the board determines that the individual has been found responsible for 3 or more state civil infraction violations of this act during the license period, the board shall conduct a hearing and may suspend the individual's license for not more than 1 year.
- (2) Except as provided in subsections (3), (4), and (5), a license shall not be revoked under this section except upon written complaint and an opportunity for a hearing before the board. The board shall give the individual at least 10 days' notice of a hearing under this section. The notice shall be by personal service or by certified mail delivered to the individual's last known address.
- (3) If the concealed weapon licensing board is notified by a law enforcement agency or prosecuting official that an individual licensed to carry a concealed pistol is charged with a felony or misdemeanor as defined in this act, the concealed weapon licensing board shall immediately suspend the individual's license until there is a final disposition of the charge for that offense and send notice of that suspension to the individual's last known address as indicated in the records of the concealed weapon licensing board. The notice shall inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board shall conduct a prompt hearing if requested in writing by the individual. The requirements of subsection (2) do not apply to this subsection.
- (4) The concealed weapon licensing board that issued a license to an individual to carry a concealed pistol shall revoke that license if the board determines that the individual is not eligible under this act to receive a license to carry a concealed pistol. The concealed weapon licensing board shall immediately send notice of the fact of and the reason for the revocation under this subsection by first-class mail to the individual's last known address as indicated on the records of the concealed weapon licensing board. The requirements of subsection (2) do not apply to this subsection.
- (5) If the concealed weapon licensing board determines by clear and convincing evidence based on specific articulable facts that the applicant poses a danger to the applicant or to any other person, the concealed weapon licensing board shall immediately suspend the individual's license pending a revocation hearing under this section. The concealed weapon licensing board shall send notice of the suspension to the individual's last known address as indicated in the records of the concealed weapon licensing board. The notice shall inform the individual that he or she is entitled to a prompt hearing on the suspension, and the concealed weapon licensing board shall conduct a prompt hearing if requested in writing by the individual. The requirements of subsection (2) do not apply to this subsection.
- (6) If the concealed weapon licensing board orders a license suspended or revoked under this section or amends a suspension or revocation order, the concealed weapon licensing board shall immediately notify a law enforcement agency having jurisdiction in the county in which the concealed weapon licensing board is located to enter the order or amended order into the law enforcement information

network. A law enforcement agency that receives notice of an order or amended order under this subsection from a concealed weapon licensing board shall immediately enter the order or amended order into the law enforcement information network as requested by that concealed weapon licensing board.

(7) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.

(8) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

(9) If a law enforcement agency or officer notifies an individual of a suspension or revocation order or amended order issued under this section who has not previously received notice of the order or amended order, the law enforcement agency or officer shall enter a statement into the law enforcement information network that the individual has received notice of the order or amended order under this section.

(10) The clerk of the concealed weapon licensing board is authorized to administer an oath to any individual testifying before the board at a hearing under this section.

History

Pub Acts 1927, No. 372, § 8, eff September 5, 1927; amended by Pub Acts 2000, No. 381, by enacting § 2 eff July 1, 2001; 2008, No. 406, imd eff January 6, 2009 (see 2008 note below).

MICHIGAN COMPILED LAWS SERVICE

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STATE OF MICHIGAN
IN THE 6th JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE NO: 18-266476-FH

vs.

JUDGE: D. LANGFORD MORRIS

CLEOPHAS ANDREW BROWN,
Defendant.

DEFENDANT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW
WITH REGARD TO THE COURT'S
JANUARY 23, 2019 EVIDENTIARY
HEARING ON DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE
AND DISMISS CHARGES

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OAKLAND COUNTY CLERK
2019 JAN 29
DEPUTY CLERK

**DEFENDANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH REGARD TO THE COURT'S JANUARY 23, 2019 EVIDENTIARY HEARING
ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE AND DISMISS CHARGES**

NOW COMES Defendant Cleophas Brown, by and through his undersigned attorney,
Zachary Race Glaza, and establishes the following-findings of fact and conclusions of law, in light
of the January 23, 2019 evidentiary hearing held in this court:

Defendant's Findings of Fact and Conclusions of Law

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Introduction

The Defendant is charged in this case with one felony count of Carrying a Concealed Weapon (CCW, pursuant to MCL 750.227) and misdemeanor offenses of Operating While Intoxicated, (OWI, MCL 257.625) and Possession of a Firearm by Person Under the Influence (MCL 750.237) that are not at issue in the instant motion. Defendant's motion to dismiss the felony count should be granted because the evidence admitted at the evidentiary hearing with regard to the issue of notice demonstrates that Defendant did not receive notice that his concealed pistol license was suspended or revoked prior to his arrest in the instant case.

Findings of Facts

At the evidentiary hearing held on January 23, 2019, Deputy Rymarz (Rymarz) of the Oakland County Sheriff's Office testified that during the course of his investigation on November 24, 2017, he contacted dispatch to request a LEIN inquiry as to the status of Defendant's concealed pistol license (CPL); dispatch indicated that Defendant's CPL had been revoked. Rymarz testified that at that time he was unable to determine whether Defendant had ever received notice that his CPL was revoked. Rymarz testified that approximately one week after Defendant's arrest he contacted the Oakland County Clerk's office (OCC) and obtained a record, admitted as People's Exhibit #1, which is a printout from the Law Enforcement Information Network (LEIN). Rymarz testified that the heading at the top of People's Exhibit #1 indicates the time that dispatch ran the inquiry regarding Defendant's CPL status. Rymarz further testified that People's Exhibit #1 indicated that Defendant's CPL had been revoked on June 6, 2015, and that the Defendant had been served verbal notice of the revocation by a peace officer. Rymarz testified that People's Exhibit #1 is a record that is regularly kept and that he was generally familiar with the law requiring a peace officer to make such an entry into the LEIN when they notify a person with a revoked CPL who has not previously received notice. Rymarz testified that he has never made such an entry in

Defendant's Findings of Fact and Conclusions of Law

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the LEIN himself, but he has made LEIN entries to memorialize the occurrence of other events when needed. Rymarz testified that when such entries were made in the LEIN the entry would include particular information such as who made the entry, when the entry was made, and the nature of the interaction that resulted in the LEIN entry.

Referring to People's Exhibit #1, Deputy Rymarz agreed that the entry says "****SERVED VERBAL NOTICE OF REVOKED CPL LICENSE BY PEACE OFFICER," and he testified that he believed the nearby notation of "LICENSE REVOCATION DATE: 06/06/2015" meant that June 6, 2015, was the day that Defendant received verbal notice from a peace officer that his CPL was revoked. Rymarz agreed that the entry of 06/06/2015 on People's Exhibit #1 is not accompanied by the name of the peace officer that provided the verbal notice, and he agreed that it is logical that such an entry would include the name of the officer that made the entry, the time, and the reason for the entry. Rymarz agreed that the date entry is immediately preceded by the label "LICENSE REVOCATION DATE:" rather than a label indicating the "NOTICE OF REVOKED LICENSE DATE."

Referring to page one of People's Exhibit #2, Rymarz agreed that the document shows that 06/06/2015 was the date that Defendant's CPL was revoked. He further agreed that on 09/12/2013 OCC sent Defendant a letter indicating that his CPL was suspended due to pending OWI charges, and it was also indicated that OCC sent a letter confirming Defendant's suspension on 11/19/2013 (see pg. 1 of People's Exhibit #2). Rymarz agreed that the 09/12/2013 and 11/19/2013 suspension letters were the only references to notices sent to Defendant listed therein (see pg. 1 of People's Exhibit #2).

Deputy Elinski (Elinski) of the Oakland County Sheriff's Office testified that, at the request of the Deputies who were already on scene, he inquired as to the Defendant's CPL status by calling dispatch to request a LEIN inquiry and by viewing the display on his in-car computer; he stated

Defendant's Findings of Fact and Conclusions of Law

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that both sources indicated that Defendant's CPL was presently revoked, but he could not recall whether he learned from his inquiry if the Defendant had been previously notified that his CPL was revoked. Elinski stated that he has never personally made or asked dispatch to make this type of entry in the LEIN, but he stated that in general, when entries are made to the LEIN he believes it would be protocol to include the officer's name that made the LEIN entry request, the time of the request, and the persons involved. Elinski testified that the LEIN indicated that Defendant's CPL was not valid, but he could not remember if the LEIN said anything about Defendant receiving notice that his CPL was revoked.

As it relates to the exhibits, the People admitted two exhibits by stipulation of the parties. People's Exhibit #1 is a copy of the record indicating that the Defendant's CPL had been revoked on June 6, 2015, and there was a statement about being served verbal notice of the revocation by a peace officer, but there was no entry stating when the verbal notice occurred or by whom the verbal notice was given.

People's Exhibit #2 is a certified copy of the records created, obtained, and maintained by the Oakland County Clerk, as it relates to the Defendant's Concealed Pistol License. The first page of People's Exhibit #2 provides a timeline of the suspension and subsequent revocation of Defendant's CPL, although the parties stipulate that the date of "11/5/13" in the second bullet point on that page should be corrected to state "11/5/14." According to People's Exhibit #2, the Defendant's CPL was originally suspended due to a pending Operating While Intoxicated charge that was dismissed by the 51st District Court without prejudice on October 29, 2014 (see pg. 20 of People's Exhibit #2). The same day that the Operating While Intoxicated charge was dismissed the Defendant called the Oakland County Clerk's Office to request that his CPL be reinstated (see pg. 1 of People's Exhibit #2). The Clerk's Office requested a Register of Action from the 51st District Court, and the Clerk's Office was informed by the 51st District Court that, as of November

Defendant's Findings of Fact and Conclusions of Law

5, 2014, the Defendant had been re-charged for the same offense (see pg. 13 of People's Exhibit #2). The Defendant was ultimately convicted of Operating While Intoxicated on May 20, 2015, and his CPL was revoked on June 6, 2015 (see pg. 1 of People's Exhibit #2).

Conclusions of Law

Defendant is not criminally liable for Carrying a Concealed Weapon. Pursuant to MCL 28.428, an individual is not criminally liable for violating an order suspending or revoking his concealed pistol license, "unless he or she has received notice of the order." MCL 28.428(8). The People have not produced evidence that conclusively—or even reliably—demonstrates that Defendant received notice that his CPL was suspended or revoked. MCL 28.428 explicitly details the manner and content of notice due to a CPL holder when circumstances dictate that their CPL be suspended, revoked, or reinstated. Defendant was not afforded such notice, so by operation of MCL 28.428, he must be afforded the protections described in subsections (8) and (9); therefore, he is immune from prosecution for Carrying a Concealed Weapon in this case.

The fundamental right to bear arms is enshrined in the United States Constitution. In some situations, being armed or unarmed can mean the difference between life and death, but carrying a concealed weapon makes an already complex matter even more sensitive. As a result, the Michigan Legislature enacted the Firearms Statute to define the process by which a citizen can attain a CPL, and how it can be taken away (see MCL 28.421 *et seq*). In this undertaking, the legislature devoted nearly 30,000 words to addressing all aspects of carrying a weapon in the State of Michigan, but pertinent to this motion is the portion of the statute that deals with providing notice of the suspension, revocation, and reinstatement of a concealed pistol license, and the protections afforded a CPL holder if that notice is not given.

Because the suspension or revocation of a person's right to carry a weapon involves the

Defendant's Findings of Fact and Conclusions of Law

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denial of a fundamental right explicitly enumerated in the US Constitution, the Michigan Legislature took care to include a detailed notice provision that must be followed when there has been a change in a person's eligibility to possess a CPL. MCL 28.428 defines two mandatory notice provisions: notice of CPL suspension pending the resolution of charges for a disqualifying crime (MCL 28.428(2), referred to as "subsection (2) notice"); and notice of revocation due to a change in eligibility (MCL 28.428(3), referred to as "subsection (3) notice").

The People claim that Defendant received sufficient notice under MCL 28.428 by arguing that the Michigan Court of Appeals concluded in *People v Fort*, No 298378, 2011 WL 4424346 (Mich Ct App, September 22, 2011) that verbal notice is sufficient to satisfy the requirements of MCL 28.428.

While it is axiomatic that the case cited by the People is not binding on this court, it is nonetheless distinguishable from the present case because the defendant in *Fort* received both verbal **and actual notice**. The *Fort* court stated that "(t)here was evidence of verbal notice prior to the date on which defendant was arrested for the crimes at issue." *Id.* at *4. In detailing the extent of that verbal notice, the court also indicated that the defendant received actual notice:

An officer who pulled defendant over about six months earlier than the stop involved in the case at bar testified that he gave defendant notice of the suspension. The officer further testified that the LEIN check relative to that earlier stop indicated that defendant had previously been given verbal notice of the suspension. Considering that defendant was arrested and charged in that case with carrying a loaded firearm in a vehicle other than a pistol, MCL 750.227c, and later pled guilty, it would defy logic to believe that the suspension and revocation never came to defendant's attention during that whole process. Additionally, the suspension letter and the revocation letter from the licensing board to defendant were admitted into evidence.

People v Fort, No 298378, 2011 WL 4424346, at *5 (Mich Ct App, September 22, 2011).

There was substantial evidence that the defendant in *Fort* received verbal notice on multiple occasions; this was supported by the testimony of the officer that provided the verbal notice. More importantly, and potentially dispositive of the issue, the court stated that "the

Defendant's Findings of Fact and Conclusions of Law

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suspension letter and the revocation letter from the licensing board to defendant were admitted into evidence.” *Id.* Whether the suspension and revocation letters were sent to the defendant’s last known address with the information required by MCL 28.428 (at the time) is not made clear, but at a minimum, it is clear that there was substantial evidence that the defendant in *Fort* received notice.

Contrasting the *Fort* defendant to the present defendant, it cannot be said that the two situations are comparable. Here, the evidence that the Defendant received verbal notice consists solely of a single line in the LEIN. The People argue that the nearby date indicates the date that verbal notice was given—despite the fact that the date is clearly labeled: “License Revocation Date.” Moreover, although both officers testified that neither of them have had occasion to make (or request to be made) such an entry in the LEIN, they have made other types of LEIN entries intended to memorialize the occurrence of an event; they testified that such an entry would include the name of the officer requesting the entry, the date and time of the entry, and the nature of the circumstances that resulted in the entry.

People’s Exhibit #1 does not contain such relevant information. It does not name the officer that requested the entry, it does not list the circumstances giving rise to the entry—it merely lists the revocation date and states that verbal notice was given. The People argue that 6/6/15 ~~is~~ the date that verbal notice was given, but who is the officer that gave that notice? What are the chances that Defendant had contact with an officer on the exact same day that his CPL was revoked by the OCC? Wouldn’t the Defendant recall interacting with an officer on that day? Why didn’t the officer seize Defendant’s CPL in that encounter? The fact is, 6/6/15 is not the day that Defendant encountered a peace officer and received verbal notice that his CPL was revoked—it is the day that the OCC revoked his CPL because it was notified by the Michigan State Police that the 51st District Court had abstracted the record of 5/20/15 conviction in the #14-4309-SD case.

Defendant's Findings of Fact and Conclusions of Law

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The incongruity between the *Fort* case and the present case is far from the only weakness in the People's argument. MCL 28.428 makes clear that the Defendant was due notice under both subsection (2) and subsection (3), yet the Defendant received only subsection (2) notice when he was notified in the 9/12/13 letter from OCC that his CPL was suspended due to pending OWI charges related to case #13-4951-SD (see People's Exhibit #2 pgs. 1, 12, and 15). The 11/19/13 letter confirming Defendant's CPL suspension does not factor into this analysis because it was just another subsection (2) notice because the #13-4951-SD case had not reached a "final disposition" (see MCL 28.428(2)). However, when case #13-4951-SD was dismissed without prejudice on 10/29/14 (see People's Exhibit #2 pg. 20), and the OCC was notified on 11/5/14 that Defendant had been recharged in case #14-4309-SD (see People's Exhibit #2 pgs. 1 and 13), a new subsection (2) notice should have been sent because Defendant is "an individual licensed to carry a concealed pistol," and he had been "charged with a misdemeanor listed in section 5b(7)(h) or (i)." MCL 28.428(2). The most critical deficiency in this chain is the fact that Defendant was not sent a subsection (3) notice after he was convicted of OWI on 5/20/15 (see People's Exhibit #2 pg. 1).

Lastly, to accept the proposition in *Fort* that verbal notice is sufficient would be to ignore the fact that the Michigan legislature laid out a detailed procedure for curtailing a CPL holder's privilege to carry a concealed weapon. Aside from the requirement in subsection (2) and (3) that the notice be sent by "first-class mail in a sealed envelope . . . to the individual's last known address," the combined subsections also require the notice to include the statutory reason for the suspension or revocation, the source of the record supporting that suspension or revocation, the length of the suspension or revocation, and whom to contact for reinstating the license on expiration of the suspension, correcting errors in the record, or appealing the suspension. Defendant argues that if verbal notice can substitute for first-class mail, then the verbal notice would still require the aforementioned information to be included. Otherwise, the language in

Defendant's Findings of Fact and Conclusions of Law

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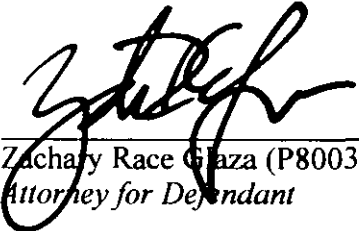
subsection (2) and (3) is superfluous, and the legislature intended it to be ignored.

Conclusion

It is clear that the Michigan Legislature enacted the Firearms Statute to provide a detailed framework for governing the possession of dangerous weapons in Michigan. Because it knows that government cannot be fickle when it moves to limit a person's ability to defend themselves, the legislature included a detailed procedure for notifying a CPL holder when it determines that his privilege should be altered or withdrawn. To deny Defendant's motion the court must find that the notice process described in the statute is advisory or optional, but to grant Defendant's motion the court only has to determine that an unpublished case with drastically different facts is not persuasive enough to justify ignoring clear Michigan law—one cannot imagine that the legislature intended its laws to be ignored.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant his motion in its entirety.

Respectfully submitted,


Zachary Race Glaza (P80036)
Attorney for Defendant

January 28, 2019

Trial Court Opinion and Order Granting Motion to Dismiss

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE
OF MICHIGAN,
Plaintiff,

v

CLEOPHAS ANDREW BROWN,
Defendant.

OAKLAND
COUNTY

18-266476-FH



Clerk
Hon

JUDGE D. LANGFORD MORRIS
PEOPLE v BROWN, CLEOPHA

OPINION AND ORDER

Defendant filed the instant Motion to Suppress Evidence and Dismiss Felony Charge. The Court conducted an evidentiary hearing and took the matter under advisement pending submission of additional materials. After careful review of the briefs and applicable law, the Court now issues its Opinion and Order. Defendant is charged with one felony count of CCW, pursuant to MCL 750.227, one misdemeanor count of OWI, pursuant to MCL 257.625 and one misdemeanor count of Possession of Firearm by Person Under Influence, pursuant to MCL 750.237. The felony count is the subject of the instant motion.

The Court finds that under the totality of testimony and evidence presented during the hearing, Defendant is not criminally liable for CCW. Pursuant to MCL 28.428, an individual is not criminally liable for violating an order suspending or revoking his concealed pistol license "unless he has received notice of the order." MCL 28.428 defines two mandatory notice provisions: notice of CPL suspension pending the resolution of charges for a disqualifying crime; and notice of revocation due to a change in eligibility. The People have failed to produce evidence that conclusively demonstrates that Defendant received notice after he was convicted of OWI on 5/20/15 that his CPL was suspended or revoked. There is no evidence of written notice and the evidence submitted to show that Defendant received verbal notice is insufficient. The single line in the LEIN,

Trial Court Opinion and Order Granting Motion to Dismiss

which does not include the date and time of the verbal notice, the name of the officer that gave verbal notice or the circumstances under which verbal notice was given, does not constitute substantial evidence that Defendant received notice.

Accordingly,

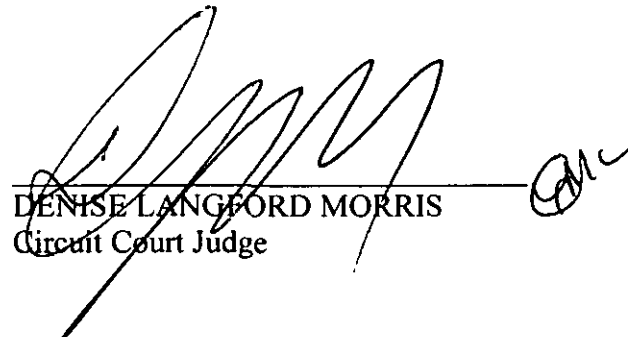
IT IS HEREBY ORDERED that Defendant's Motion to Suppress Evidence is GRANTED.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Felony Count of Carrying a Concealed Weapon, pursuant to MCL 750.227 is GRANTED.

IT IS SO ORDERED.

DATED:

FEB 26 2019


DENISE LANGFORD MORRIS
Circuit Court Judge

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Case Search

Case Docket Number Search Results - 348079

Appellate Docket Sheet

COA Case Number: 348079

MSC Case Number: 160661

PEOPLE OF MI V CLEOPHAS ANDREW BROWN

1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AT	PRS	(75168) MEIZLISH LOUIS F
2	BROWN CLEOPHAS ANDREW Oral Argument: Y Timely: Y	DF-AE	APP	(80036) GLAZA ZACHARY RACE

COA Status: Case Concluded; File Open **MSC Status:** Pending on Application

Case Flags: Criminal Interlocutory; Prosecutor Appeal; Electronic Record

03/19/2019 1 App for Leave to Appeal - Criminal

Proof of Service Date: 03/19/2019

Answer Due: 04/09/2019

Fee Code: EPAY

Attorney: 75168 - MEIZLISH LOUIS F

02/26/2019 2 Order Appealed From

From: OAKLAND CIRCUIT COURT

Case Number: 2018-266476-FH

Trial Court Judge: 34884 LANGFORD-MORRIS DENISE KAREN

Nature of Case:

Motion to Quash Information Granted

03/19/2019 5 Transcript Requested By Atty Or Party

Date: 03/15/2019

Reporter: 7118 - TRASKOS SANDRA J

Filed By Attorney: 75168 - MEIZLISH LOUIS F

Hearings:

01/23/2019

03/20/2019 3 Defective Holding File Letter

Attorney: 75168 - MEIZLISH LOUIS F

Comments: Letter sent to all parties.

03/20/2019 4 Correspondence Received

Date: 03/20/2019

For Party: 2 BROWN CLEOPHAS ANDREW DF-AE

Attorney: 80036 - GLAZA ZACHARY RACE

Comments: sent Murphy letter

03/22/2019 6 Telephone Contact

For Party: 1 PEOPLE OF MI PL-AT

Attorney: 75168 - MEIZLISH LOUIS F

Comments: Left msg that transcript request had been received with app-defect has been cured

04/09/2019 7 Answer - Application

Proof of Service Date: 04/09/2019

Event No: 1 App for Leave to Appeal - Criminal

105a

Court of Appeals Docket Entries

For Party: 2 BROWN CLEOPHAS ANDREW DF-AE
 Filed By Attorney: 80036 - GLAZA ZACHARY RACE

04/29/2019 9 Reply to Answer - Application
 Proof of Service Date: 04/29/2019
 Event No: 1 App for Leave to Appeal - Criminal
 For Party: 1 PEOPLE OF MI PL-AT
 Filed By Attorney: 75168 - MEIZLISH LOUIS F

04/30/2019 8 Steno Certificate - Tr Request Received
 Date: 04/18/2019
 Timely: Y
 Reporter: 7118 - TRASKOS SANDRA J
 Hearings:
 01/23/2019

05/22/2019 10 Notice Of Filing Transcript
 Date: 05/15/2019
 Timely: Y
 Reporter: 7118 - TRASKOS SANDRA J
 Hearings:
 01/23/2019

05/22/2019 11 Transcript Reminder Request
 File Location:
 Mail Date: 05/23/2019
 Comments: For 1/23/19 Hearing Transcript

05/29/2019 12 Transcript Filed By Party
 Date: 05/29/2019
 Reporter: 7118 - TRASKOS SANDRA J
 Filed By Attorney: 75168 - MEIZLISH LOUIS F
 Hearings:
 01/23/2019

06/11/2019 15 Submitted on Motion Docket
 Event: 1 App for Leave to Appeal - Criminal
 District: T

06/14/2019 16 Order: Application - Grant
 View document in PDF format
 Event: 1 App for Leave to Appeal - Criminal
 Panel: JT,MJC,ELG
 Attorney: 75168 - MEIZLISH LOUIS F
 Comments: The appeal is limited to the issues raised in the application and supporting brief.

06/14/2019 17 Transcript Complete Per COA Atty
 Date: 06/14/2019
 Reporter: 7118 - TRASKOS SANDRA J
 Comments: See events 10 & 12.

07/02/2019 18 Brief: Appellant
 Proof of Service Date: 07/02/2019
 Oral Argument Requested: Y
 Timely Filed: Y
 Filed By Attorney: 75168 - MEIZLISH LOUIS F
 For Party: 1 PEOPLE OF MI PL-AT

07/23/2019 19 Brief: Appellee
 Proof of Service Date: 07/23/2019
 Oral Argument Requested: Y
 Timely Filed: Y

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Court of Appeals Docket Entries

Filed By Attorney: 80036 - GLAZA ZACHARY RACE

For Party: 2 BROWN CLEOPHAS ANDREW DF-AE

07/23/2019 20 Noticed

Record: REQST

Mail Date: 07/24/2019

08/01/2019 21 Brief: Reply

Proof of Service Date: 08/01/2019

Oral Argument Requested:

Timely Filed: Y

Filed By Attorney: 75168 - MEIZLISH LOUIS F

For Party: 1 PEOPLE OF MI PL-AT

08/07/2019 22 Electronic Record Filed

10/08/2019 30 Submitted on Case Call

District: D

Item #: 10

Panel: PMM,CAO,BAS

10/08/2019 31 Oral Argument Audio

Listen to audio in MP3 format

10/15/2019 33 Opinion - Per Curiam - Published

[View document in PDF format](#)

Pages: 7

Panel: PMM,CAO,BAS

Result: Reversed and Remanded

12/10/2019 35 SCt: Application for Leave to SCt

Supreme Court No: 160661

Answer Due: 01/07/2020

Fee: E-Pay

For Party: 2

Attorney: 77811 - DOMAN TIMOTHY

12/16/2019 36 Other

Date: 12/10/2019

For Party: 2 BROWN CLEOPHAS ANDREW DF-AE

Attorney: 53310 - GRABEL SCOTT A

Comments: Notice of filing for leave to appeal in the Supreme Court

05/01/2020 37 SCt Order: MOAA -Oral Argument on Lv Appl

[View document in PDF format](#)

Comments: Invited AC=PAAM, CDAM.

07/15/2020 38 SCt Motion: Housekeeping

Party: 2

Filed by Attorney: 77811 - DOMAN TIMOTHY

Comments: Motion to extend time for filing DFAT supp brf to 8-17-2020.

07/16/2020 39 SCt: Answer to SCt Motion

Filing Date: 07/16/2020

For Party: 1 PEOPLE OF MI PL-AT

Filed By Attorney: 75168 - MEIZLISH LOUIS F

Timely: Y

07/22/2020 40 SCt Order: Chief Justice - Grant

[View document in PDF format](#)

Comments: Grant DFAT motion to extend the time for filing his supp brf to 8-17-2020.

Case Listing Complete

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Court of Appeals Opinion

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CLEOPHAS ANDREW BROWN,

Defendant-Appellee.

FOR PUBLICATION

October 15, 2019

9:10 a.m.

No. 348079

Oakland Circuit Court

LC No. 2018-266476-FH

Before: METER, P.J., and O'BRIEN and SWARTZLE, JJ.

PER CURIAM.

The prosecution appeals by leave granted¹ the trial court's opinion and order granting defendant's motion to dismiss his carrying a concealed weapon (CCW) charge, MCL 750.227(2). We reverse.

I. FACTS

Defendant received a concealed pistol license (CPL) on August 6, 2013. On August 30, 2013, defendant was arrested and charged with operating while intoxicated (OWI). On September 12, 2013, the Oakland County Gun Board (the Board) issued a written notice to defendant informing him that his CPL "is SUSPENDED" because of the OWI charge. The letter requested that defendant attend a November 19, 2013 meeting of the Board where they would discuss the suspension. On October 29, 2014, defendant's OWI charge was dismissed without prejudice, but was later reinstated on November 5, 2014. Defendant chose not to appear at the November 19, 2013 meeting, where the Board unanimously voted to uphold the suspension of defendant's CPL. Defendant was eventually convicted of OWI on May 20, 2015. Because of this conviction, the Board revoked defendant's CPL on June 6, 2015.

¹ *People v Brown*, unpublished order of the Court of Appeals, entered June 14, 2019 (Docket No. 348079).

On November 24, 2017, at approximately 6:00 p.m., Oakland County Sheriff Deputies Robert Elinski and Eric Rymarz were dispatched to a scene involving a motor vehicle accident and OWI investigation. After identifying defendant as the individual involved in the accident, Deputies Elinski and Rymarz were informed that defendant had a pistol in his possession and did not possess a valid CPL. Deputy Elinski ran a Law Enforcement Information Network (LEIN) search on defendant's CPL status, which confirmed that his CPL had been revoked. Defendant was arrested at the scene. A few days later, Deputy Rymarz contacted the Oakland County Clerk's Office about defendant's CPL, and received a fax of a LEIN entry dated November 24, 2017, and time-stamped 6:02 p.m., which provided, in relevant part:

11/24/17 | 18:02:37.72 | LGWCCW | NOTICE OF REVOKED CPL LICENSE
BY PEACE OFFICER.

* * *

REVOKED LICENSE TO CARRY A CONCEALED PISTOL (CPL)

THIS INDIVIDUAL IS NOT ELIGIBLE TO CARRY A CONCEALED
PISTOL.

LICENSE REVOCATION DATE: 06/06/2015

***SERVED VERBAL NOTICE OF REVOKED CPL LICENSE BY PEACE
OFFICER.

Defendant was eventually charged with three crimes stemming from the November 24, 2017 arrest: (1) CCW, MCL 750.227; (2) OWI, second offense, MCL 257.625; and (3) possessing a firearm while under the influence, MCL 750.237(2). Defendant filed a motion to dismiss the CCW charge, arguing that he could not be held criminally liable for CCW because he did not receive written notice that his CPL had been revoked as required by the concealed pistol licensing act (CPLA), MCL 28.421 *et seq.* Defendant also contended that the LEIN entry was inconclusive in establishing whether defendant actually received verbal notice of his CPL's revocation before November 24, 2017. The prosecution argued in response that the LEIN entry demonstrated that defendant was served with verbal notice of his CPL's revocation before his November 24, 2017 arrest, and that verbal notice was sufficient under the CPLA. The trial court granted defendant's motion to dismiss the CCW charge, holding that defendant could not be "criminally liable for CCW" because the prosecution "failed to produce evidence that conclusively demonstrates that Defendant received notice . . . that his CPL was suspended or revoked." The trial court explained that verbal notice that defendant's CPL was revoked was insufficient under the CPLA, and that the LEIN entry was also inadequate.

II. INTERPLAY BETWEEN THE CCW STATUTE AND THE CPLA

A. PRESERVATION OF THE ISSUE AND STANDARD OF REVIEW

On appeal, the prosecution argues that the trial court erred in dismissing the CCW charge because defendant was not required to have notice that his CPL was revoked in order for the prosecution to prove CCW. The prosecution failed to raise this issue in the trial court, but it

raised the issue in its application for leave to appeal, and this Court granted leave for “the issues raised in the application” *People v Brown*, unpublished order of the Court of Appeals, entered June 14, 2019 (Docket No. 348079). At any rate, “[a]lthough this issue is unpreserved because [the prosecution] failed to raise it below, we may still consider it because it involves a question of law and the facts necessary for its resolution have been presented.” *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998). See also *People v Houston*, 237 Mich App 707, 712; 604 NW2d 706 (1999).

This Court reviews “a trial court’s decision on a motion to dismiss charges against a defendant for an abuse of discretion.” *People v Nicholson*, 297 Mich App 191, 196; 822 NW2d 284 (2012). “A trial court necessarily abuses its discretion when it makes an error of law.” *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012). Questions of law, which include questions of statutory interpretation, are reviewed de novo. *People v Pinkney*, 501 Mich 259, 267; 912 NW2d 535 (2018).

B. ANALYSIS

Defendant was charged with CCW under Michigan’s CCW statute, MCL 750.227. To rule on the question before us, we must decide whether MCL 750.227 requires the prosecution to prove that the defendant had notice that he was not allowed to carry a concealed pistol. MCL 750.227 provides, in relevant part:

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

In *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987), this Court explained the prosecution’s burden for proving CCW:

Carrying a concealed weapon is a general intent crime. The only intent necessary is an intent to do the act prohibited, to knowingly carry the weapon on one’s person or in an automobile. While a person may be exempted from criminal liability for carrying a concealed weapon if he is licensed to do so, the language in the statute “without a license so to carry said pistol as provided by law” does not add an element to the crime. Here, the evidence established that defendant knowingly carried the revolver in his automobile. Since defendant did not sustain his burden of showing that he was in fact properly licensed to carry the weapon, no further proofs were required of the prosecution to sustain defendant’s conviction. [Some quotation marks and citations omitted.]

Combs suggests that the prosecution is not required to prove as an element of CCW that defendant had notice that his CPL had been revoked. To support a charge of CCW, the prosecution need only show that the defendant knowingly carried the pistol in an automobile or on his or her person; if a defendant then wishes to avoid the CCW charge based on a CPL, the

burden shifts to the defendant to prove that he or she was “properly licensed to carry the weapon[.]” *Id.* at 673. That the prosecution need not prove as an element of CCW that defendant had notice that his CPL was revoked is buttressed by our Supreme Court’s discussion in *People v Quinn*, 440 Mich 178, 189; 487 NW2d 194 (1992), where the Court recognized “that the prosecution need not prove as an element of the offense of carrying a concealed weapon that the defendant knew his [CPL] was expired.”² Based on the foregoing, it is clear that, to prove CCW, the prosecution was not required to show that defendant had notice that his CPL was revoked. The trial court therefore erred as a matter of law when it held that defendant was “not criminally liable for CCW” because the prosecution “failed to produce evidence that conclusively demonstrates that Defendant received notice . . . that his CPL was suspended or revoked.” Because this error of law was the basis for the trial court’s dismissal of defendant’s CCW charge, the dismissal was necessarily an abuse of discretion. *Waterstone*, 296 Mich App at 132.

Defendant argues that he should not be held criminally liable for the CCW charge because, under the doctrine of *in pari materia*, the notice provisions in the CPLA should be construed together with the CCW statute. We disagree.

Under the doctrine of *in pari materia*, “statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law.” *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). But where “the Legislature has chosen to specifically limit the applicability of a statutory definition, the doctrine of *in pari materia* is inapplicable.” *People v Feeley*, 499 Mich 429, 444; 885 NW2d 223 (2016).

The relevant provisions of the CPLA deal with the rules and procedures governing the issuance, suspension, revocation, and reinstatement of CPLs, and the penalty for violating an order that suspends or revokes an individual’s CPL. See MCL 28.428(7) and (8).³ They

² We recognize that this principle of law was “not essential to [the] determination of” *Quinn*, and therefore was likely nonbinding obiter dictum. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 597; 374 NW2d 905 (1985). Nonetheless, we find this dictum persuasive, particularly because the *Quinn* Court classified it as a “[f]amiliar contemporary example[.]” of when “[t]he Legislature may impose certain penalties regardless . . . of what the actor actually knew or did not know.” *Quinn*, 440 Mich at 188.

³ At all times relevant to this case, MCL 28.428(7) and (8) provided:

(7) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.

(8) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly

provide, in pertinent part, that an individual cannot be criminally liable for violating the CPLA if the individual did not receive notice that his or her CPL had been suspended or revoked. MCL 28.428(7) and (8). The CCW statute, on the other hand, makes a person criminally liable for CCW if he or she carries a concealed pistol “without a license to carry the pistol as provided by law[.]” MCL 750.227(2).

Defendant argues that the phrase “as provided by law” in MCL 750.227(2) refers to the licensing procedures in MCL 28.428, and that the exemption from criminal liability for lack of notice in MCL 28.428(7) and (8) applies to criminal liability under MCL 750.227(2). While the CPLA and CCW statutes refer to the same subject matter (carrying concealed weapons), it is clear that the Legislature chose to limit the applicability of CPLA’s criminal exemptions. The CPLA and the CCW statutes are in separate codes of the Michigan Compiled Laws. MCL 28.428(7) states that “an individual is not criminally liable *for violating the order or amended order*” that suspended or revoked their CPL, and MCL 28.428(8) states that an individual must be given notice that their CPL was suspended or revoked “before an arrest is made for carrying the pistol *in violation of this act.*” (Emphasis added).⁴ Nothing in the CPLA suggests that the Legislature intended to expand the applicability of its provisions to other portions of the Michigan Compiled Laws. Likewise, nothing in the CCW statute suggests that the Legislature intended to incorporate MCL 28.428’s exemptions from criminal liability into the Michigan Penal Code, where the CCW statute is located. The Michigan Penal Code provides numerous exemptions to criminal liability for CCW. See, e.g., MCL 750.231; MCL 750.231a. Nowhere do these exemptions reference MCL 28.428, nor does the Penal Code otherwise exempt a person from criminal liability for CCW if the individual did not receive notice that their CPL had been suspended or revoked. It is therefore clear that the Legislature chose to limit the applicability of MCL 28.428’s exemptions from criminal liability solely to criminal liability under the CPLA, and, thus, “the doctrine of *in pari materia* is inapplicable.” *Feeley*, 499 Mich at 444. Because the doctrine of *in pari materia* is inapplicable, we decline to make the notice requirement in the

store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

The Legislature has since amended the statutory scheme addressing CPLs. See 2015 PA 3, effective December 1, 2015; 2015 PA 207, effective December 1, 2015; 2017 PA 95, effective October 11, 2017. All references to MCL 28.428 in this opinion refer to the version of MCL 28.428 in effect before these amendments.

⁴ MCL 28.428(4) provides the criminal penalty for violating an order suspending or revoking a CPL, stating in relevant part:

The licensee shall promptly surrender his or her license to the county clerk after being notified that his or her license has been revoked or suspended. An individual who fails to surrender a license as required under this subsection after he or she was notified that his or her license was suspended or revoked is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

CPLA an element of CCW. See *People v Kern*, 288 Mich App 513, 522; 794 NW2d 362 (2010) (explaining that a court may not add a provision to a statute that the Legislature saw fit to omit).

III. NOTICE

The prosecution alternatively argues that even if it was required to show that defendant had notice that his CPL was revoked or suspended in order to prove CCW, the evidence provided below demonstrated that defendant was served with adequate notice that he could not legally possess a concealed pistol before his November 24, 2017 arrest for CCW. We agree.

A. STANDARD OF REVIEW

This Court reviews “a trial court’s decision on a motion to dismiss charges against a defendant for an abuse of discretion.” *Nicholson*, 297 Mich App at 196. “A trial court may be said to have abused its discretion only when its decision falls outside the range of principled outcomes.” *Id.* A trial court’s factual findings are reviewed for clear error. *People v Antwine*, 293 Mich App 192, 194; 809 NW2d 439 (2011). “A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made.” *Id.* (quotation marks and citation omitted).

B. ANALYSIS

Under MCL 28.428(7) and (8), an individual cannot be criminally liable or otherwise arrested for carrying a pistol in violation of an order suspending or revoking the individual’s CPL unless the individual received notice of the suspension or revocation. The LEIN entry, dated November 24, 2017, stated that defendant’s CPL was revoked on June 6, 2015, and that a peace officer served defendant with verbal notice of his CPL’s revocation. The trial court held that this “verbal notice was insufficient.” Yet nothing in MCL 28.428 states *how* an individual must be notified that his or her CPL has been revoked or suspended, only that the individual receive notice. Therefore, the trial court erred in holding that verbal notice was insufficient under MCL 28.428.

But even overlooking this legal error, the prosecution produced evidence establishing that MCL 28.428’s notice requirement was otherwise satisfied. The relevant statutory provisions provide that an individual cannot be criminally liable for carrying a concealed pistol unless the individual received notice that their CPL was revoked or suspended. The uncontested evidence showed that defendant received written notice that his CPL was suspended, and nothing suggests that defendant had reason to believe that this suspension was lifted.

Defendant was sent a letter on September 12, 2013, informing him that his CPL was suspended because of his August 30, 2013 OWI charge. The letter requested that defendant appear before the Board on November 19, 2013. While that OWI charge was dismissed without prejudice on October 29, 2014, the charge was refiled on November 5, 2014. At the November 19, 2013 meeting, which defendant chose not to attend, the Board confirmed that defendant’s CPL was suspended because of the August 30, 2013 OWI charge. Thus, the evidence confirms

that defendant received notice that his CPL was suspended. No evidence in the record suggests that defendant had reason to believe his CPL was reinstated.⁵ Thus, when defendant was arrested on November 24, 2017, he had no reason to believe that he could legally carry a concealed pistol. Accordingly, even if the CPLA required the prosecution to establish as an element of CCW that defendant received notice that his CPL had been revoked or suspended, the uncontested evidence confirms that defendant received notice that his CPL was suspended. Thus, the exemptions from criminal liability in MCL 28.428 do not apply, and the trial court erred by holding otherwise.

IV. CONCLUSION

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Colleen A. O'Brien
/s/ Brock A. Swartzle

⁵ In his motion to dismiss, defendant asserted that, “upon information and belief,” after the first OWI charge was dismissed on October 29, 2014, the county clerk’s office informed him “that his CPL would be reinstated.” Defendant also asserted that, “[u]pon information and belief,” the November 24, 2017 incident “was the first time that [defendant] was given any notice that his CPL was revoked,” since he did not receive any communication from the Board “despite [defendant]’s multiple requests.” However, defendant’s assertions in his motion are not based on actual evidence, such as testimony, affidavit, documentation, or otherwise. See *People v Meissner*, 294 Mich App 438, 458; 812 NW2d 37 (2011) (stating that parties’ arguments are not evidence).

But even accepting as true defendant’s assertions in his motion, he does not contend that he believed that his CPL’s suspension was, in fact, lifted. At best, he was aware that his CPL had been suspended and was unsure whether that suspension had been lifted, so he repeatedly tried to contact the Board for clarification, which he never received. Thus, he had no reason to believe that his CPL was not still, at the very least, suspended at the time of his November 2017 arrest.